TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1925

No. [redacted] 32

JAMES C. DAVIS, AGENT PROVIDED FOR BY THE TRANSPORTATION ACT, 1920, PETITIONER,

vs.

L. D. ALEXANDER AND FRANK GRIFFITH

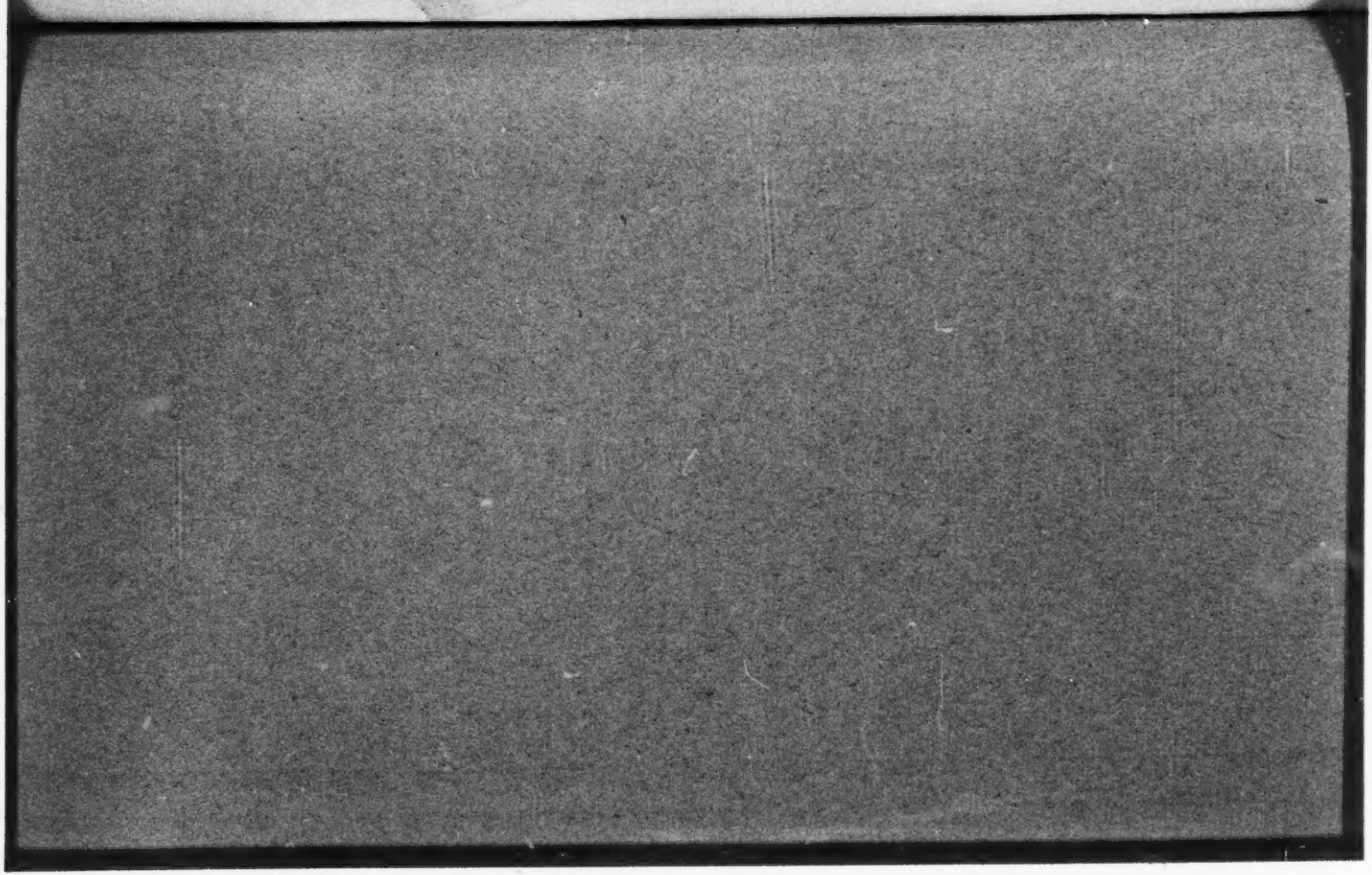
ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

Erroneous Evidence

PETITION FOR CERTIORARI FILED FEBRUARY 1, 1926

CERTIORARI GRANTED JUNE 2, 1926

(30,095)



(30,095)

'OURT OF THE UNITED STATES

'TOBER TERM, 1923

No. 785

'AMES C. DAVIS, AGE.. ' PROVIDED FOR BY THE TRANSPORTATION ACT, 1920, PETITIONER,

vs.

L. D. ALEXANDER AND FRANK GRIFFITH

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

INDEX

	Original	Print
l oceedings in supreme court of Oklahoma	a	1
' ition in error	a	1
Case-made in district court of Oklahoma County	1	2
Index (omitted in printing)	2	2
Petition	5	3
Præcipe for summons	13	6
Summons and sheriff's return	15	7
al of jurisdiction and motion to quash summons	18	8
avit of E. E. Blake	20	9
Answer	23	9
Order assigning judge	25	10
Colloquy between court and counsel	27	11
Testimony of Grover B. Hill	29	12
E. H. Johnson	54	26
Frank Griffith	60	29
Plaintiffs' Exhibit A—Account of sales of Witherspoon McMullen Live Stock Commission Co	72	37
Plaintiffs' Exhibits B to J, Inclusive—Freight bills	75	41

)D & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 15, 1924

TORN PAGE

	Original	Print
Testimony of William E. Grimes	87	51
Plaintiffs' Exhibit K—Table 50 of Rock Island lines	100	58
Testimony of H. L. Reed	101	59
R. F. O'Day	113	65
John Guinn	116	66
Notice to take testimony	118	67
Testimony of U. S. Devor	120	68
James D. Phipps	124	71
F. L. Dalton	132	75
W. L. Batson	137	80
F. D. Gibson	158	91
Instructions requested by plaintiffs	141	82
Instructions requested by defendant	144	83
Court's instructions to jury	152	87
Verdict	168	97
Minute entries	169	97
Stenographer's certificate	170	98
Motion for new trial	172	99
Order overruling motion for new trial	175	99
Journal entry of judgment	178	100
Clerk's certificate	180	100
Stipulation re case-made	182	101
Judge's certificate	183	101
Judgment	185	102
Opinion, Jarman, C	186	103
Clerk's certificate	195	108
Order granting certiorari	**196**	**109**

[fol. a] [File endorsement omitted]

IN THE

SUPREME COURT OF THE STATE OF OKLAHOMA

No. 14237

JAMES C. DAVIS, Agent United States Railroad Administration, in Charge of Chicago, Rock Island & Pacific Railroad and Chicago, Rock Island & Gulf Railroad, under Transportation Act of 1920, Plaintiff in Error,

vs.

L. D. ALEXANDER and FRANK GRIFFITH, Defendants in Error

PETITION IN ERROR—Filed April 12, 1923

Now comes the above named plaintiff in error and respectfully represents and shows to this Honorable Court that on the 2nd day of November, A. D. 1922, in a certain action then pending in the District Court of Oklahoma County, State of Oklahoma, wherein L. D. Alexander and Frank Griffith were plaintiffs, and James C. Davis, Agent, United States Railroad Administration, in charge of Chicago, Rock Island & Pacific Railroad, etc., was defendant, the above named defendants in error, L. D. Alexander and Frank Griffith, obtained a verdict against this plaintiff in error, as Agent, provided for in the "Transportation Act, 1920, on an alleged cause of action arising out of the use and operation of the Chicago, Rock Island & Pacific Railroad during Federal control, in the sum of Sixteen Hundred, fifty-two and 99/100 ($1,652.99) dollars, upon which verdict, by consideration of said District Court, a judgment was rendered against this plaintiff in error for said sum; that the motion of this plaintiff in error for a new trial, filed within due time, was overruled by said District Court on the 3rd day of November, 1922, to which action of said court in overruling said motion for a new trial plaintiff in error, at the time, duly excepted, and gave the requisite notice of his intention to appeal therefrom to this Court. [fol. b] Plaintiff in error avers that there is manifest error in the record, proceedings and judgment in said cause materially affecting his substantial rights, in this, to-wit:

1. The said District Court of Oklahoma County erred in overruling the motion of this plaintiff in error for a new trial.

2. Said District Court of Oklahoma County erred in rendering any judgment in said cause against this plaintiff in error.

3. Wherefore, plaintiff in error prays that the action of said District Court, in overruling his motion for a new trial and rendering

a judgment against him, be reversed, set aside and held for naught, and that this cause be remanded to the trial court with instructions to render a judgment in favor of plaintiff in error.

C. O. Blake, W. R. Bleakmore, A. T. Boys, W. F. Collins, Attorneys for Plaintiff in Error.

[fol. 1] In District Court, Oklahoma County, Oklahoma

[Title omitted]

Defendant's Case-made—Filed in District Court, Mar. 10, 1923—In Supreme Court, Apr. 12, 1923

[File endorsement omitted.]

[fols. 2 & 3] Index omitted.

[fol. 4] [File endorsement omitted]

In the District Court of Oklahoma County

No. 32406

L. D. Alexander and Frank Griffith, Plaintiffs,

vs.

James C. Davis, Agent United States Railroad Administration, in Charge of Chicago, Rock Island & Pacific Railroad and Chicago, Rock Island & Gulf Railroad under Transportation Act of 1920, Defendant.

Be it remembered That, in the above named court, in the above entitled and numbered cause, on the 17th day of September, 1921, came the plaintiffs, L. D. Alexander and Frank Griffith, and commenced their certain civil action against the defendant, James C. Davis, Agent, United States Railroad Administration, in charge of Chicago, Rock Island & Pacific Railroad and Chicago, Rock Island & Gulf Railroad, under Transportation Act of 1920, by filing in said court their certain petition in writing, making due deposit of money in lieu of bond for costs, and causing summons to be issued and served as hereinafter set forth.

A true copy of said petition, with all endorsements thereon, was then, and is now, in the words and figures as follows, to-wit:

[fol. 5] IN THE DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

PETITION—Filed September 17, 1921

Comes now L. D. Alexander and Frank Griffith, plaintiffs, leave of court first being had and obtained, and for their cause of action against the defendant allege and state:

I

That the defendant is the duly appointed, qualified and acting agent for the United States Railroad Administration, and as such has charge of all of the litigations arising out of the operation of railroads while under federal control, and particularly the operation of the lines of railroad belonging to the Chicago, Rock Island and Pacific Railway Company, and Chicago, Rock Island & Gulf Railway Company, known as the Rock Island lines.

II

That the said line of railroad extending east from Tucumcari, New Mexico, to Texola, a station on the boundary line between the State of Texas and the State of Oklahoma, is known as Chicago, Rock Island & Gulf Railway Company's property, but that said Company is a subsidiary Company belonging to and owned by the [fol. 6] Chicago, Rock Island & Pacific Railway Company; that said Chicago, Rock Island & Pacific Railway Company owns and controls said line of railroad, and that the officers and agents located at Amarillo, Texas, transact the business of both lines and represent said railroads in their official capacity; that the said dispatcher at Amarillo, Texas, handles all trains between that point and Sayre, Oklahoma; that from Sayre, Oklahoma on east, the trains are handled by the dispatcher at El Reno, Oklahoma.

III

That some time between Christmas and New Year's day, 1919, the plaintiffs herein were negotiation for the purchase of five hundred sixty-four (564) head of cattle located on Ed Mitchell's ranch in New Mexico, about twenty miles east of Roy, New Mexico.

Before buying said cattle, Frank Griffith, one of the plaintiffs, took up with one Peterson, defendant's live stock agent at Amarillo, Texas, the matter of furnishing cars, in which to ship said cattle; that said Peterson agreed to furnish twenty-four cars if plaintiffs would give him eight to ten days; that said cattle were in two divisions, three hundred thirty-seven (337) head being close to Roy, New Mexico, and two hundred twenty-seven (227) head close to Middlewater; that a few days later the said Frank Griffith had up with said Peterson, Live Stock Agent, the question of furnishing cars,

and said Peterson was advised that a part of said cattle were nearer Roy, and that plaintiffs wanted to load from Roy and Middlewater; and the said Peterson agreed to deliver a part of the cars at Middlewater, and the others to the E. P. & S. W. Railway, at Tucumcari, to be loaded by that road at Roy on January 3; that it was agreed by [fol. 7] and between the said plaintiffs and said Peterson that said shipments would be consolidated into a special stock train at Tucumcari and moved to Oklahoma City without unloading; plaintiffs allege that the said Peterson, Live Stock Agent, did furnish fourteen cars for the loading at Roy, New Mexico, on January 3, 1920, and that said cattle were loaded and delivered to the defendant at Tucumcari about midnight of the same day, and said shipment left immediately for Oklahoma City, arriving there in good condition and were sold on the market of January 7, 1920.

Plaintiffs further allege that said defendant failed to furnish the balance of the said cars for loading said cattle at Middlewater, and the said plaintiffs then drove said cattle to Campana, a station over on the E. P. & S. W. Railway line, and on January 5, 1920, plaintiffs' agent, Grover Hill, notified said Peterson by wire that he would load the other nine cars on January 6, at Campana; that said Peterson had instructed these plaintiffs to notify him by wire when said cattle would be loaded; that after notifying said Peterson of their intention to load at Campana on January 6, the E. P. & S. W. Railway Company's agent at Tucumcari notified said Grover Hill that they would not receive the cattle at Campana unless the defendant in charge of the Rock Island lines would agree to receive said cattle at Tucumcari upon their arrival there; that the said Grover Hill, thereupon on behalf of these plaintiffs, immediately advised the agent of the Rock Island lines at Tucumcari, and said agent took the matter up with the officials of said defendant at El Reno, Oklahoma, and later said agent advised said Grover Hill that it would be all right to load the cattle at Campana, and the Rock Island would receive the cattle at [fol. 8] Tucumcari that night; that the said Grover Hill then loaded said cattle at Campana and returned with said nine cars and delivered them to the defendant at Tucumcari, at about seven o'clock p. m., said sixth day of January, 1920; that he was then advised by said agent for defendant at Tucumcari that the train had been annulled and that said shipment of cattle could not move until the next morning.

IV

That said shipment of cattle described in the foretoing paragraphs were in good condition at the time they were loaded at Campana, New Mexico, and in good condition at the time they were delivered to said defendant at Tucumcari, New Mexico; that the distance between Campana and Tucumcari is about sixteen miles; that the said defendant for a valuable consideration agreed to safely transport and ship said cattle to the market at Oklahoma City, Oklahoma, Stock Yards Station, within a reasonable time, and deliver same to the plaintiffs' order in reasonably good condition. That a reasonable time for transporting shipments of cattle from Tucumcari, New

Mexico, to Oklahoma City, Oklahoma, is about thirty-five to forty hours.

V

Plaintiffs state that said defendant wrongfully, and negligently, and through the negligence and carelessness of his agents, servants and employees, delayed said shipment of cattle at Tucumcari about ten hours without any excuse therefor, and at Glen Rio about fifty-four hours, and that said shipment of cattle were unreasonably delayed at other stations and points along the line of said defendant; that said cattle were on the road and standing in the cars about seventy-two hours longer than was necessary, and beyond what was a [fol. 9] reasonable time required for transporting and delivering said cattle to the Oklahoma Stock Yards, Oklahoma City, Oklahoma.

VI

That by reason of the careles-ness and negligence of said defendant, his servants, agents and employees, in wrongfully, negligently, and carelessly delaying said shipment for an unreasonable length of time, as aforesaid, and in failing and refusing to furnish cars for the movement of said cattle upon January 3, 1920, along with the balance of said shipment, which were loaded at Roy, New Mexico, and in failing and refusing to receive said cattle at Tucumcari, New Mexico, on the night of January 6, 1920, after said defendant had agreed through his live stock agent, to furnish said shipment transportation out of Tucumcari on said night of January 6, 1920, said cattle were greatly injured in looks and appearance, causing them to be in a stale and stupid condition, and causing them to lose extra flesh to the amount of about fifty pounds per head.

Plaintiffs further allege that said shipment of cattle consisted of two hundred twenty-seven (227) head, averaging about nine hundred sixty-five (965) pounds, and that on account of an excess shrink of fifty pounds per head over and above what said cattle would have shrunk had they been transported within the usual and ordinary time, they were damaged as follows; that said excess shrink in weight amounted to 11,350 pounds, and at nine dollars and sixty-five ($9.65) per hundred pounds, plaintiffs were damaged in the sum of one thousand and ninety-five dollars and twenty-seven cents ($1,095.27).

[fol. 10] Plaintiffs further allege that said shipment of cattle was damaged to the extent of twenty-five cents per hundred pounds, on account of their stale and stupid looks and appearance and by reason thereof brought twenty-fove cents per hundred pounds less than they would have brought, if they had been transported in the usual and customary time; that said shipment weighed one hundred ninety-one thousand, three hundred (191,300) pounds, by reason whereof, plaintiffs were damaged in the sum of four hundred seventy-eight dollars and thirty-two cents ($478.32).

VII

Plaintiffs further allege that because of the careles-ness and negligence of said defendant, and herein alleged, said shipment of cattle was unloaded at Glen Rio, New Mexico, and held for a period of about sixty hours, and that the plaintiffs were put to an extra expense of feeding and caring for said cattle at Glen Rio, and were caused to pay out the sum of one hundred seventy-seven dollars and sixty-two cents ($177.62) in order to feed, water and care for said cattle.

VIII

That by reason of all the facts herein alleged, and by reason of the negligence and carelessness, of said defendant, his agents, servants, and employees, as aforesaid, in delaying said shipment of cattle at Tucumcari, New Mexico, Glen Rio, New Mexico, and other places along the said line or railroad for an unreasonable length of time, said defendant has become liable and indebted to these plaintiffs in the following sums:

[fols. 11 & 12] 227 head, 50 lbs. shrink per head; 11,350 lbs. @ $9.65	$1,095.27
227 head of cattle, 25¢ per cwt. account of looks and appearance, weight 191,300, at 25¢ per cwt.	478.32
For extra feed purchased by plaintiffs at Glen Rio, New Mexico	177.62
Total	$1,751.21

Wherefore, plaintiffs pray that they have judgment against said defendant in the sum of one thousand, seven hundred fifty-one dollars and twenty-one cents ($1,751.21), together with interest thereon from the tenth day of January, 1920, until paid, and all costs of this action.

Suits & Hall, Attorneys for Plaintiffs.

[File endorsement omitted.]

[fols. 13 & 14] In the District Court of Oklahoma County

[Title omitted]

Præcipe for Summons—Filed September 17, 1921

The Clerk of said Court will issue a summons in the above entitled cause directed to the sheriff of Oklahoma County, against the Defendant, to-wit: James C. Davis Agt. U. S. R. R. Admn. C. R. I. & P. Ry. Co. and James C. Davis, Agt. U. S. R. R. Admn. C. R. I. & G. Ry. Co., requiring said Defendant to answer on or before the

17th day of Oct. 1921 and returnable on the 27th day of Sept. 1921; and you will endorse thereon. Suit brought for Damages, failure to furnish stock cars, and unless said Defendant answer, judgment will be taken for the sum of $1,751.21, with interest at 6 per cent per annum from the 10th day of Jan., 1920.

Dated Sept. 17, 1921.

Suits & Hall, Attorneys for Plfts.

[File endorsement omitted.]

[fol. 15] STATE OF OKLAHOMA,
Oklahoma County, ss:

SUMMONS AND RETURN—Filed September 21, 1921

The State of Oklahoma to the Sheriff of Oklahoma County:

You are hereby commanded to notify James C. Davis, Agt. U. S. R. R. Admn. C. R. I. & P. Ry. Co. and James C. Davis, Agt. U. S. R. R. Admn. C. R. I. & G. Ry. Co., that he has been sued by L. D. Alexander and Frank Griffith in the District Court of Oklahoma County, State of Oklahoma, and that he must answer the petition of said L. D. Alexander and Frank Griffith, filed against him in the Clerk's office of said Court, on or before the 17th day of October, 1921, or said petition will be taken as true and judgment rendered accordingly.

You will make due return of this Summons on or before the 27th day of Sept., 1921.

Given under my hand and the Seal of said Court this 17th day of Sept., 1921.

Cliff Myers, Court Clerk, by Fritz Blumenthal, Deputy.
(Seal.)

Endorsements: Suit brought for Damages for failure to furnish stock cars. If the defendant fail to answer, judgment will be taken for the sum of $1,751.21, with interest at the rate of 6 per cent per annum from the 10th day of Jan., 1921, and costs of suit. Cliff Myers, Court Clerk, by Fritz Blumenthal, Deputy.

[fols. 16 & 17] Endorsements: I received the above Summons on 9/17, 1921 and executed the same in my county by delivering a true copy of this Summons, with the endorsements thereon to James C. Davis, Agent U. S. R. R. Admn. C. R. I. & P. Ry. Co. & James C. Davis, Agent U. S. R. R. Admn. C. R. I. & G. Ry. Co. by delivering a true copy of this Summons to E. E. Blake in person, Service agent for above Co. this 9/20/1921. Ben B. Dancy, Sheriff of said County by W. V. Brown, Deputy.

[File endorsement omitted.]

[fol. 18] IN THE DISTRICT COURT OF OKLAHOMA COUNTY

[Title omitted]

DENIAL OF JURISDICTION AND MOTION TO QUASH SUMMONS—Filed October 15, 1921

Now comes the defendant above named, James C. Davis, the Agent provided for in the Transportation Act, 1920, and appearing specially and only for the purposes hereof, respectfully represents and shows to this honorable court that the cause of action alleged and set forth in the petition of the plaintiff herein filed is, in part, based on an alleged cause of action arising our of the possession, use and operation by the President, under the provisions of the Federal Control Act, of the railroad of the Chicago, Rock Island & Gulf Railway Company; that said Chicago, Rock Island & Gulf Railway Company was at all the dates and times mentioned and set forth in said petition, and now is, a corporation organized and existing under and by virtue of the laws of the State of Texas, with its principal place of business in said State, and is not now and never has been a citizen or resident of the State of Oklahoma, and that said railroad was at all the dates [fol. 19] and times in said petition mentioned and set forth, ever since has been, and now is located wholly within the political boundaries of the State of Texas, and that no person residing in the State of Oklahoma or any county thereof, on whom process and notices issued by any court of record in said State may be served, has ever been designated by the said Chicago, Rock Island & Gulf Railway Company or this defendant, or any authority thereunto empowered; that the summons in this case, by virtue of which jurisdiction of the person of this defendant in so far as the same purports to affect, or the alleged cause of action arises out of the possession, use or operation by the President, under the provisions of the Federal Control Act, of said railroad of the Chicago, Rock Island & Gulf Railway Company is concerned, was served on one E. E. Blake in Oklahoma County, State of Oklahoma; that the said E. E. Blake was not at the time of said service of summons a person on whom summons or process, issued out of this or any other court in the State of Oklahoma, could lawfully be served in this case, and that the said E. E. Blake is not now and never has been an officer, agent or employe of the said Chicago, Rock Island & Gulf Railway Company, and that the said service or summons on him is wholly ineffective and void, as will appear by the affidavit of said E. E. Blake hereto attached and made a part hereof.

Wherefore, defendant moves the court to quash, set aside and to hold for naught the said summons and purported service thereof in the above entitled and numbered cause, as the same was not served and returned according to law and is wholly insufficient to confer jurisdiction on this court.

C. O. Blake, W. R. Bleakmore, R. N. Tolbert, Roy St. Lewis,
Attorneys for Defendant.

[fol. 20] IN THE DISTRICT COURT, OKLAHOMA COUNTY

AFFIDAVIT OF E. E. BLAKE—Filed October 15, 1921

E. E. Blake, being first duly sworn, upon his oath deposes and says:

That he is the person upon whom was served the sumons referred to in the attached motion; that the same was served upon him in Oklahoma City, State of Oklahoma; that at the time of the service of said summons he was not and never had been a person on whom process issued out of any court in the State of Oklahoma, in actions affecting The Chicago, Rock Island & Gulf Railway Company or its property, might be served, and had never been named or designated as such person, and was not at the time of the service of said summons, is not now, and never has been authorized to receive or accept service of process in any action affecting the said The Chicago, Rock Island & Gulf Railway Company, or its property, or in any action against the Agent provided for in the Transportation Act, 1920, arising out of the possession, use or operation of the railroad of said The Chicago, Rock Island & Gulf Railway Company by the President, under the provisions of the Federal Control Act, and was never named as an agent or person on whom such process could be served by the defendant in the above entitled cause, or any other person or authority.

[fol. 21 & 22] Further affiant saith not.

E. E. Blake.

Subscribed and sworn to before me this 4th day of October, 1921. Carolan L. Lambley, Notary Public. My Commission Expires Dec. 15, 1924.

[File endorsement omitted.]

[fol. 23] IN THE DISTRICT COURT, OKLAHOMA COUNTY

[Title omitted]

ANSWER—Filed October 15, 1921

Now comes the defendant above named and for his separate answer to the petition of the plaintiff, in so far as the same attempts to set forth or alleges a cause of action against him, arising out of the possession, use or operation by the President of the railroad of The Chicago, Rock Island and Pacific Railway Company, under the provisions of the Federal Control Act, denies each and every allegation in said petition contained, except such as are hereinafter specifically admitted, and admits that he is the Agent designated, as provided for in the Transportation Act, 1920.

2. Answering further this defendant avers that at the dates and times mentioned and set forth in plaintiffs' petition, the railroad of The Chicago, Rock Island and Pacific Railway Company, and the railroad of The Chicago, Rock Island and Gulf Railway Company, and the railroad of the El Paso & Southwestern Railway Company were each and all in the exclusive possession and control and were being used and operated by the President of the United States, [fol. 24] by and through the Director General of Railroads, in interstate commerce as interstate carriers for hire, and that each and every of said railroads was so in the possession and was used and operated as a separate, individual and distinct entity, and that the shipment of the cattle of plaintiffs referred to in their petition was in interstate commerce, and that the rights, duties and liabilities of the parties hereto are governed by the provisions of the acts of Congress applicable to such transportation and the effective schedules, tariffs, rates and charges relative to and controlling transportation of property between the places involved and mentioned in said petition.

Wherefore, having answered, this defendant prays that plaintiffs take nothing and that he be discharged with his costs.

C. O. Blake, W. R. Bleakmore, R. N. Tolbert, Roy St. Lewis, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 25] IN SUPREME COURT OF OKLAHOMA

In re ASSIGNMENT OF DISTRICT JUDGE—Filed October 30, 1922

It having been made to appear, as provided by sec. 9, Art. 7, of the Constitution, that the public business requires it:

Now, Therefore, I, John B. Harrison, Chief Justice of the Supreme Court of Oklahoma, do hereby designate, appoint and assign Honorable Frank Mathews, regular judge of the Twenty-fifth District Court judicial district, to hold court at Oklahoma City, Oklahoma county, thirteenth district court judicial district, for a period of one week, to-wit: Beginning Monday, October 30th, 1922, it being a part of the provisions of this order that two or more district judges may sit separately in said district at the same time.

Done in Chambers at Oklahoma City, Oklahoma, this the 30th day of October, 1922.

John B. Harrison, Chief Justice.

I, William M. Franklin, clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the above and foregoing is a full, true and complete copy of the order of said court in above [fol. 26] matter, as the same remains on file in my office.

In witness whereof, I hereunto set my hand and affix the Seal of said Court, at Oklahoma City, this 30th day of Oct., 1922.

Wm. M. Franklin, Clerk, by P. S. Hillman. (Seal.)

[File endorsement omitted.]

[fol. 27] Beginning of trial, November 1, 1922

And be it further remembered that, in said court, afterwards, to-wit, on November 1, 1922, a juridical day of the regular September, 1922, term thereof, the Honorable Frank Mathews, Judge, presiding, said cause came regularly on for trial. The plaintiffs appeared in person and by Suits & Hall, their attorneys; the defendant appeared by W. R. Bleakmore and W. F. Collins, his attorneys.

Thereupon, a jury was duly empanelled and sworn to try said cause, the plaintiffs, by Fred Suits, one of their attorneys, stated their case to the jury, and the defendant, by W. R. Bleakmore, one of his attorneys, stated his case to the jury.

Whereupon, the following proceedings were had and things done on the trial of said cause, in the order following, to-wit:

Mr. Bleakmore: I want to interpose an objection to the introduction of certain evidence in this case. Now comes the defendant, Director General of Railroads, on behalf of the defendant charged as being in control of and operating the railroad of the Chicago, Rock Island and Pacific Railway Company, and objects to the introduction of any evidence relative to any alleged contract with one Peterson to furnish 24 cars, part of the same at Middlewater and others at the E. P. & S. W. Railway Company at Tucumcari, New [fol. 28] Mexico, to be loaded by that road at Roy on the 3rd day of January, 1920; and also to any evidence relative to a contract with the said Peterson to the effect that the two shipments referred to in the petition of plaintiffs and heretofore, should be consolidated into a special train at Tucumcari and come to Oklahoma City without unloading; and also to the objection of any evidence with respect to any contract relative to the transportation of said cattle, other than the 227 head involved in particular in this action and included in the shipment which was moved as pleaded in this action; and to any evidence with respect to any damages to the plaintiffs' cattle as a result of the breach of any contract made with the said Peterson; and also to any evidence with respect to any special contract made between the plaintiffs and any of the agents of the said railway company to make a particular connection at Tucumcari to transport plaintiffs' cattle out of Tucumcari by a particular train; and also to any evidence with respect to any contract for any special movement of train, or special contract for expediting the carriage and movement of said cattle over the rights of other persons, or of transporting the plaintiffs' cattle out of Tucumcari to Oklahoma City without unloading.

Which objections were argued to the court, and, at the conclusion of arguments,

The Court: Let the record show that the ruling is reserved. Proceed.

Whereupon, plaintiffs proceeded with the introduction of evidence in their behalf in chief, as follows, to-wit:

[fol. 29] GROVER B. HILL, having been first duly sworn, testified, as a witness on behalf of the plaintiffs, as follows:

Direct examination.

By Mr. Suits (attorney for plaintiffs):

Q. State your name.
A. Grover B. Hill.
Q. Where do you reside?
A. Amarillo, Texas.
Q. What business are you engaged in?
A. Livestock brokerage business.
Q. What business were you engaged in in the months of December 1919 and January 1920?
A. Livestock brokerage business, at Amarillo, Texas.
Q. Do you know Frank Griffith?
A. Yes, sir.
Q. Did you know him in December and January of 1919 and 1920?
A. I did.
Q. Did you have any dealings in the month of December 1919 or month of January 1920, with Mr. Griffith?
A. Yes, sir.
Q. State what those dealings were and what those business transactions were?
A. Well, one particular deal was selling a bunch of cattle for Ed. Mitchell, owner, at Roy, New Mexico.
Q. Did you sell Mr. Griffith that bunch of cattle?
A. Yes, sir; I handled it.
Q. For Ed. Mitchell?
A. Yes, sir.
[fol. 30] Q. How many was in that bunch?
A. Around 500, or little better I think.
Q. Were they all together?
A. No, sir.
Q. Where were they located?
A. They were located east of Roy, or southeast of Roy, New Mexico. Two different bunches of them. One bunch was quite a bit south of the other bunch.
Q. Did Mr. Griffith and Mr. Alexander purchase the herd of cattle?
A. Yes, sir.
Q. What kind of cattle were they?
A. They were cows.

Q. Were they all delivered to Mr. Griffith at one place, or part one place and part another?

A. One bunch delivered to Mr. Griffith at Roy, New Mexico. He received those himself, and I received the balance of them at Campana, New Mexico.

Q. Who did you receive them for at Campana?

A. Mr. Griffith. He couldn't be there.

Q. When was the bunch delivered at Roy, New Mexico?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial in this case, as not involved in the shipment in this suit.

The Court: It will be overruled.

Mr. Bleakmore: Note an exception.

A. That shipment was delivered, I believe it was the 3rd day of January. I was there with Mr. Griffith at the time.

Q. When was the delivery made of the other shipment, at Campana?

[fol. 31] A. Three days later. That is my recollection.

Q. Were you ready to deliver all of them on the 3rd day of January?

Mr. Bleakmore: Objected to by the defendant, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

A. Yes, sir.

Q. What was the reason that the delivery was not made at the same time on the whole herd?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

A. We didn't have enough cars to get them out in.

Q. The delivery that was made at Roy, New Mexico, on the 3rd day of January, were they taken out by cars promptly?

A. Yes; they moved right out, immediately after loading.

Q. And Mr. Griffith, was he with you there?

A. He went with that shipment; yes, sir.

Q. The bunch that was delivered at Campana on the 6th of January, you say wasn't delivered until the 6th because of lack of cars?

Mr. Bleakmore: Object to this, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

A. Yes, sir.

Q. How far is Campana from Tucumcari?

A. It is 30 or 35 miles.

[fol. 32] Q. What was the condition of these cattle at the time they were delivered to the plaintiffs?

A. They were dry, fat cows. They were in good condition. They were grazed across to the stockyards.

Q. How many of them?

A. 227, I believe, in that bunch.

Q. At Campana?

A. Yes, sir.

Q. When you received these at Campana for the plaintiffs, did you make any provision for loading them? Did you make the arrangements for loading these cattle at Campana?

A. Well, yes, I attended to all of the details of the transaction, such as getting cars up there and notifying the railroad when I was ready.

Q. Campana is over on a little branch railroad out of Tucumcari?

A. Yes, sir.

Q. What is the name of that branch?

A. Dawson Branch, belon-ing to the E. P. & S. W. I believe.

Q. Were you in Tucumcari before you went up there? Do you know what kind of railroad it is that runs up to Campana?

A. Well, nothing only what they call it.

Q. What do they call it?

A. They call it the Dawson Branch of the E. P. & S. W.

Q. What do those initials mean, if you know?

A. El Paso & Southwestern.

Q. Is that part of the Rock Island System?

A. I understand it is.

[fol. 33] Q. Before going up to Campana to load those cattle, were you in Tucumcari?

A. Well, at first I was up with the cattle and there was uncertainty about whether they were going to accept those cattle or not, and we couldn't get any satisfaction up there and there was no telephone up there, and Mr. Mitchell and myself got on the train and went down to Tucumcari to see the agent down there to see about the cars.

Q. Is he the joint agent for the Chicago, Rock Island & Pacific and the El Paso & Southwestern?

A. I understand that he is.

Q. When you went to Tucumcari, did you see this agent?

A. Yes, sir.

Q. What took place between you there?

A. Well, he said he couldn't load us, or wouldn't load us until the Rock Island east from Tucumcari would agree to received cars for delivery at Tucumcari after being loaded.

Q. Did he make any arrangements for finding out whether the Rock Island would receive them or not?

A. He told me that he had it up with the authorities at El Reno and would let me know as quick——

Mr. Bleakmore: Object to that, as incompetent, irrelevant and immaterial, and hearsay.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. Tell the jury what he told you.

A. He said he had it up with the authorities over at El Reno and as soon as he found out whether they would receive those cattle when we got them to Tucumcari or not, he would let me know whether to [fol. 34] load them. We were holding the cattle in the pasture pending the time when we could get them out and send them on through. We wanted them to come on and not stop in Tucumcari. When the time came for the train to go up to Campana that morning, he told me to go on up and get on the caboose and he would send a message up to me on up the road whether to go on or get off the caboose and come back, and he sent word up by the brakeman to load the cattle, that it would be all right.

Q. How was that message sent?

A. It was on a piece of paper, telegraph blank, I think, or piece of yellow paper.

Q. Do you remember what wording it was?

A. Well, not exactly, only it said go ahead and load the cattle, and was signed by Mr. Dever.

Q. He was the joint agent there?

A. Yes, sir.

Q. What did you do with that message?

A. Well, I threw it down or crumpled it up. I don't remember what I did with it. I haven't had it since. I don't remember of ever having seen it since. All I wanted to know was that I had my cars, and when he told me I had them that ended the transaction as far as I was concerned at that time.

Q. Did you go up to Campana then?

A. Yes, sir.

Q. On that train?

A. Yes, sir.

Q. Did that train carry your empty cars up there?

A. Yes, sir.

[fol. 35] Q. What time did you get back to Tucumcari with the cattle?

A. Just a little bit after dark.

Q. What day?

A. Well, the same day.

Q. What day of the month was that?

A. That was on the 7th, I believe it was.

Q. To refresh your recollection——

A. The 6th.

Q. About what time was it—6 or 7 o'clock?

A. 6:30 or 7 o'clock.

Q. That you got back to Tucumcari?

A. The lights were on when we got in there.

Q. When you got in there, what did you do?

A. Went in the depot to see what time I would get out and sign up the papers they require you to sign to come on, and I asked the man in charge there when we will get out, and he said, "That train has been annulled that was to take you out and you can't get out before 7:30 in the morning."

Q. Was that the man in charge of the station there?

A. That was the man that was in charge.

Q. You say you went in there to sign up. Is there an agent at Campana?

A. No, sir. It is just a stockyards and section house.

Q. What further took place between you and this fellow, after he advised you the train had been annulled?

A. Well, he asked me if I wanted those cattle unloaded, and I told him I didn't, as it would take most of the night to unload them and re-load them, but if they could be put on a siding somewhere where they wouldn't be bumped into and joused about any I thought the cattle would do better than if they unloaded them.

[fol. 36] Q. What time did you get out of Tucumcari next morning?

A. 7:30 or 8 o'clock.

Q. Did you accompany the cattle out of there next morning?

A. I did.

Q. How far did you go before you stopped?

A. Went nineteen miles. I think it is 19; about that, anyway. Went to Glen Reo.

Q. What was done then?

A. We were tied up, stopped and unloaded.

Q. How long were you in Glen Reo?

A. Well, from the time we got there that morning, which must have been around 9:30, we was there that day and that night and next day and next night, and come out of there at sun-down the next evening.

Q. You got there at 9:30 on January 7th, in the morning?

A. Yes, sir.

Q. You were there the balance of the 7th, you were there all day the 8th; and what time on the 9th did you get out of there?

A. Train pulled out just about sun-down; sun was going down. I think we started loading about 4 o'clock.

Q. About 6:30 p. m. on the 9th you got out of Glen Reo?

A. Yes, sir.

Q. Did you accompany that shipment from Glen Reo to Oklahoma City?

A. No, sir. I stopped at Amarillo.

Q. Do you remember what happened when you got down to Amarillo?

A. Well, the cattle went to the stockyards and were unloaded.

[fol. 37] Q. They were unloaded at Amarillo?

A. Yes, sir.

Q. What time did you get into Amarillo?

A. About 11:30 at night.

By the Court:

Q. Of the same day?

A. Yes, sir: same day that we left Glen Reo.

By Mr. Suits:

Q. How far from Glen Reo to Amarillo?

A. About 70 miles.

Q. Do you know what was the occasion for unloading the cattle again at Amarillo?

A. Well, no, I don't.

Q. How long had they been on the cars when they were unloaded at Amarillo?

A. From about 6:30 to 11:30.

Q. Do you know what time that shipment of cattle got out of Amarillo?

A. They got out of there the next night, about midnight.

Q. Then they were in Amarillo 24 hours?

A. Practically so, yes sir.

Q. Did you request that the cattle be unloaded at Amarillo?

A. I don't think I did.

Q. Did you accompany the shipment from Amarillo on into Oklahoma City?

A. No, sir.

Q. Do you know whether anybody accompanied them or not?

A. I don't remember whether there was anybody with them or not.

[fol. 38] Q. You don't know when they reached here?

A. No, sir. We have to send papers with them, but sometimes we did and sometimes didn't, and I don't remember.

Q. You say you were in the cattle brokerage business how long?

A. Been in the cattle brokerage business since the first day of January, 1913.

Q. Do you know whether cattle handled under the conditions that these cattle were handled, will shrink over and above what they would shrink if they were transported in the usual time?

A. Yes sir, I do.

Q. Do you know what the usual and customary time of transportation of cattle is from Tucumcari, New Mexico, to Oklahoma City?

A. Well, it is less than 36 hours, because they come through without unloading nearly all the time, and that is as long as they are permitted on the cars.

Q. Then about 36 hours is the usual and customary time?

A. Not over 36. It seems to me they are customarily, on a special stock train from Tucumcari to Oklahoma City, I believe it is 28 hours, to come through from Cucumcari without unloading.

Q. 36 hours is the longest time cattle can be confined on the cars?

A. Yes; without unloading to feed and rest.

Q. Take the handling that was given this shipment, Mr. Hill, what, in your judgment as an experienced cattle shipper, would these cattle shrink between Tucumcari, New Mexico, and the Oklahoma City market, over and above what they would have shrunk if they had come through in the usual and customary time?

[fol. 39] A. Ever when cattle are taken off of their accustomed

range and handled different from that which they are accustomed to, they commence to shrink immediately, and the more you handle them the more they shrink, until all the shrink is gone, and cattle will shrink as high as 125 pounds, or even more.

Q. 125?

A. Cattle off grass, on a long shipment. While the ordinary shrink on a shipment of cattle runs from 40 to 50 pounds on an ordinary 36-hour haul, the longer you keep them on there the more they will shrink.

Q. What, in your judgment, would have been the extra shrink, over and above the 36 to 50 pounds, in view of the manner and handling they were given in this shipment, between the time of their arriving at Tucumcari and the time they arrived in Oklahoma City?

A. Well, I estimated at the time, around 60 pounds. They were very large cows and very fat, and off of the grass.

Q. Now, Mr. Hill, these cattle had been unloaded at Glen Reo and were in the pens there from 9:30 to 10 o'clock on the morning of January 7th until 4:30 or 5 o'clock on the afternoon of the 9th?

A. Well, they wasn't unloaded immediately after we got in there. It might have been around 11 o'clock when they were unloaded. They stayed on the cars.

Q. They were in the pens practically 48 hours at Glen Reo?

A. I would think it was over 50 hours, if I remember.

Q. And they were re-loaded at Glen Reo and then made the trip to Amarilio, and were on the train only about 6 or 7 or 8 hours; something like that?

[fol. 40] A. Less than that. About five and a half hours.

Q. Was there any necessity for unloading these cattle at Amarillo?

A. Well, no; no real necessity for unloading them, if they had had a train to have brought them out.

Q. Mr. Hill, another question, I overlooked. Cattle being handled in the manner that has been detailed here by you, does it affect their appearance upon the market?

A. Yes, sir; it sure does.

Q. In your judgment, the handling that was given this shipment, how much would it affect the cattle on the market, per hundredweight?

A. Well, it would affect them around 25 to 30 cents on the hundred, depending on the price of the cattle somewhat.

Q. You mean they would bring that much less than they would have brought?

A. Yes. A man buys cattle like everything else, on its appearance. If they don't look good, look bad and skinned up and look gaunt and hollow-eyed, they bring less.

Q. Does the treatment that cattle receive cause them to become stale and stupid and present a bad appearance?

A. Yes, sir. Just like anything else, makes their appearance look bad.

Q. Did you see these cattle after they reached Amarillo?

A. Next morning I did.

Q. What was their appearance at that time?

A. Well, they were badly shrunk; badly shrunk.
Q. What condition were they in as to being gaunt and stale and stupid and drawn?
[fol. 41] A. Well, they was in that condition that is brought about by the gaunt shrink on them. When cattle shrink it makes them look that way. That is what the shrink produces, is that appearance.
Mr. Suits: That's all.

Cross-examination.

By Mr. Bleakmore (attorney for defendant):

Q. Mr. Hill, was there any delay in shipment from Amarillo to Oklahoma City?
A. I wasn't with the shipment.
Q. You don't know about the time they made?
A. No, I don't know. All I know would be hearsay, about what time they got in.
Q. Now, you told the jury a while ago that you thought the E. P. & S. W. railway was part of the Rock Island Lines.
A. That is what I have understood.
Q. How did you get that information?
A. By being a matter of general information.
Q. Then you don't know, as a matter of fact, that it is an entirely independent corporation and has nothing to do with the Rock Island System at all; you don't know that *he* be a fact?
A. No, I don't know it.
Q. They do have a joint agent at Tucumcari, however, you say?
A. That is my understanding of it.
[fol. 42] Q. And agent for the Rock Island; and by the Rock Island you mean The Chicago, Rock Island & Pacific Railway Company down in New Mexico?
A. Well, it is known generally as the Rock Island road down there.
Q. In New Mexico?
A. Goes by that name, the Rock Island.
Q. Now, Campana is in New Mexico, is it not?
A. Yes, sir.
Q. And Tucumcari is in New Mexico?
A. Yes, sir.
Q. Where is Glen Reo?
A. Glen Reo is on the state line between Texas and New Mexico.
Q. And where are the railroad yards and the depot, in Texas or New Mexico?
A. In Texas.
Q. Now, you say you loaded these cattle at Campana?
A. Yes, sir.
Q. And you got down to Tucumcari about 7 o'clock in the evening—6 or 7 o'clock in the evening?
A. About the time the lights were on. It just got dusk.

Q. Who was the person who told you that some Rock Island train had been annulled?

A. The man that was in the office.

Q. Ticket-agent, Mr. Dever?

A. I don't know what his name was.

Q. You called the name of the agent and said his name was Beaver, didn't you?

A. No; Dever.

[fol. 43] Q. Was it Dever told you that?

A. No, it wasn't Dever. It was somebody that was there. Devers was off duty. He is the man stays there in the day-time. At least he wasn't there at that time.

Q. Do you know anything about the trains out of Tucumcari east to Amarillo on the Rock Island railroad, as to what time they run? I mean stock trains, carrying cattle and stock.

A. No, nothing only the trains where there is special stock trains from time to time they put on.

Q. Was there any engine down there at Tucumcari at that time?

A. That night when I got in there?

Q. Yes.

A. There was a man there in charge.

Q. I am talking about engines, to draw a train out of Tucumcari.

A. Oh, engines?

Q. Yes. Was there an engine there?

A. Well, there was engines there.

Q. Except passenger engines?

A. I don't know what kind of engines they were. I don't know one engine from another. There is quite big yards there, and there was engines there.

Q. You tell the jury that the joint agent at Tucumcari promised you cars out at Campana, and delivered those cars out to Campana, did he?

A. Yes, sir.

Q. And you loaded the cars. He promised you, you say, to have a train on hand on the Rock Island railroad to pull those cars out of Campana east to Amarillo and on to Oklahoma City, leave the [fol. 44] night of the 6th on which you arrived there?

A. He told me that he wouldn't unload me unless they would agree to receive me.

Q. He didn't load you, did he?

A. Did it under his directions.

Q. You loaded the cars at Campana, where there was no agent you said?

A. But he said go ahead. It was under his jurisdiction. There was no agent up there.

Q. Was he agent of the Rock Island or E. P. & S. W.?

A. He must be for both of them. He is the only one around there.

Q. Did he promise to have a train there to haul those 9 cars of cattle east that night?

A. He told me they would go east that night if he let me load them.

Q. Go east that night in a special train?

A. He told me "If I tell you to load those cattle, we will haul them out."

Q. On that night?

A. As soon as I got in there.

Q. He promised to take you out as soon you got in?

A. Yes, sir; take me right on as soon as I got there.

Q. You left there next morning, and got east as far as Glen Reo and were tied up at Glen Reo?

A. Yes, sir; tied up.

Q. Your cattle were left in the yards at Glen Reo, on the Texas side of the line; is that true?

A. Yes, sir.

[fol. 45] Q. What was the cause of the delay at Glen Reo, as you understood it?

Mr. Suits: We object to that.

The Court. Overruled.

Mr. Suits: Exception.

A. What is the question?

Q. What was the cause of the delay at Glen Reo?

A. Well, the cause of the delay was that they stopped the train and tied it up there.

Q. Why, if you know?

Mr. Suits: Objected to, as incompetent, irrelevant and immaterial, and not within the issues.

The Court: Overruled.

Mr. Suits: Exception.

Q. You know, Mr. Hill. Just tell the jury what you know.

A. All I know is they said they couldn't go through the snow. It was snowing at that time.

Mr. Suits: We move to strike the answer, as not being within the issues in this case.

The Court: Overruled.

Mr. Suits: They haven't plead an act of God, and when they haven't set that up as a defense they have no right to introduce any evidence on it whatever.

Mr. Bleakmore: If there is any question about it, I would like to amend the answer.

Mr. Suits: We object to the amendment of the answer at this time. This case has been pending two years and went through one trial and dismissed, and they have had plenty of time to frame the issues.

[fol. 46] Mr. Bleakmore: We expect to show that any delay in this case was not on the part of the Chicago, Rock Island & Pacific Railway and that it occurred on the Gulf, which is an entirely different corporation, and I tnink I have the right to show, under

the circumstances,—So far as the Rock Island is concerned, that isn't a defense, because of the fact the movement of the train on the Chicago, Rock Island & Pacific Railway Company was not delayed on account of the snow storm. Evidence in this case, if permitted to go in, will show that it was a storm of unusual severity, and that the first train to reach Tucumcari was a snow plow and the first train out was a passenger train and immediately afterwards these cattle went out, upon the first available train that handled freight upon the Gulf road, and went into Amarillo. I think, in fairness to the jury, that all of these facts ought to be developed in this case. We expect Your Honor, when we get thru with this case, to instruct this jury that the only recovery which may be had in this case, if any at all, is on account of the fault of the Rock Island, and by the Rock Island I mean the Chicago, Rock Island & Pacific Railway Company. There is no answer in this case for the Gulf, for the reason it wasn't served. However, I think the facts ought to be permitted to go to the jury. The evidence will show in this case, that this was a shipment which originated on a different line of railway and the Rock Island is merely the connecting carrier and not the originating carrier. I offer to amend the answer and plead the cause of the delay after the cattle left Tucumcari and while in the yards at the junction point of the Gulf, Colorado and Santa Fe Railway Company, and was wholly due to an unprecedented snow storm, and that the effect of the storm was known at all times to the plaintiff, and he cannot be taken by surprise.

Mr. Suits: We object to that, because it will absolutely reform the whole issues in this case. If that amendment is made, then we must go back and file a reply and set up the facts in that reply that will require new evidence which we would not be able to produce at this trial.

Mr. Bleakmore: They have a witness on the stand who was present at the time, all the way through.

The Court: I don't believe the court ought to permit the amendment now, Mr. Bleakmore.

[fol. 47] Mr. Bleakmore: It is within the discretion of the court, of course.

The Court: I don't believe I should permit the amendment. If it was a matter you didn't know anything about, the court would permit the amendment, but it appears you knew all about it.

Mr. Bleakmore: Yes, we knew all about it. I do not really believe that it would have any effect on this case ultimately.

Q. Now, you say that you accompanied these cattle as far as Amarillo, Texas?

A. Yes, sir.

Q. And saw them at the time of their arrival there?

A. Saw them the next morning after they arrived.

The Court: In order to make the record properly, I guess I had better sustain the objection to that evidence, and you better take an exception to it.

Mr. Bleakmore: I am not going to take an exception. I think Your Honor is right about it.

Q. At that time, you say, Mr. Hill, they were in bad condition. As far as shrinking was concerned, they were in bad condition at that time, were they?

A. Yes, sir.

Mr. Suits: Where is that.

Mr. Bleakmore: At Amarillo.

Q. They were delayed at Amarillo, you say, how long?

A. Got in there about 11 o'clock one night, and I think it was about the same time next night when they loaded out.

Q. They got out of there about 12 o'clock at night coming eastward to Oklahoma City, you say Mr. Hill?

A. Yes, sir.

[fol. 48] Q. On what day of the month was that if you know?

A. It must have been along about the 11th of January, wasn't it? They left Tucumcari on the 9th, I believe was the date, or the night of the 9th—No, it would have been the night of the 10th, because we got in there the night of the 9th, same night that we left Glen Reo, and got out next night about 12 o'clock, or it was in along towards midnight.

Q. Now, you think those cattle would have lost about 60 pounds in weight, you say?

A. About 60 pounds more than they ordinarily would have on that kind of a trip, in that length trip under ordinary and proper treatment.

Q. If these cattle had a good run from Amarillo into Oklahoma City, if they came in the usual time or about the usual time, then I will ask you if they would have lost in weight between Amarillo and Oklahoma City, or between the line of Oklahoma and Texas and Oklahoma City, over an ordinary movement?

Mr. Suits: Objected to, as incompetent, irrelevant, and immaterial.

A. I don't get your question.

Q. Now, here is what I want to get at: Most of the loss, if not all of it, was on account of the delay at Glen Reo and at Amarillo, wasn't it?

A. Well, the longer you keep cattle on the road the more they shrink. That is, they get sorry and stale and more discouraged.

Q. If there was a good movement between Amarillo and Oklahoma City, the ordinary movement, they wouldn't have lost any [fol. 49] more flesh on that movement than if—In other words, you couldn't attribute the loss to the trip between Amarillo and Oklahoma City, if it was a good ordinary movement of those cattle?

A. Well, the condition that the cattle were in would have made them shrink more than the ordinary trip where they are loaded out in good condition and handled straight through.

Q. They were in bad condition at Amarillo, then?

A. Yes, sir.

Q. And if they lost anything extra on the road from Amarillo to Oklahoma City, it was due to the condition in which the cattle were at the time they were loaded at Amarillo; is that correct?

A. Partially, yes.

Q. Well, wouldn't it be wholly?

A. No, not altogether.

Q. What would they have lost in the movement out of Amarillo to Oklahoma City?

Mr. Hall: Objected to, unless the question states the time of the movement from Amarillo to Oklahoma City.

Mr. Bleakmore: I refer to this particular movement.

Mr. Hall: There is no testimony to show the time of movement from Amarillo to Oklahoma City.

The Court: He said ordinary movement.

Mr. Bleakmore: He is acquainted with those conditions.

Mr. Hall: We further object, for the reason the movement from Amarillo to Oklahoma City isn't shown to have been the ordinary movement.

The Court: It will be overruled.

[fol. 50] Q. Had there been a good, ordinary movement of the cattle from Amarillo to Oklahoma City, you wouldn't attribute any loss to that, would you? I mean to that particular movement.

A. Any movement would cause some loss, on any movement of cattle.

Q. Would there have been any more loss?

A. The condition of the cattle would make it a more loss.

Q. Condition of the cattle at Amarillo, if there was any more loss, would have caused that loss; is that correct?

A. Not all of it. It would have caused part of it.

Q. How much?

A. Well, that is something that would be hard to say.

Q. You couldn't tell, could you?

A. It would depend a good deal on the particular bunch of cattle, whether——

Q. Well, we will say this particular bunch of cattle, now. And you say you don't know?

A. I don't know how much or what proportion it would be. That is something that would be hard to figure out. Nobody could tell.

Q. What was the condition of these cattle when they arrived at Glen Reo and were put in the yards there?

A. Fairly good.

Q. Had you lost anything out of Tucumcari to Glen Reo?

A. You mean had I lost any cattle or not?

Q. Yes; or had the cattle undergone any loss in flesh over and above what they would have lost in the ordinary movement of cattle over that road?

A. Yes, sir. They had been longer on the road, 12 hours, than they ordinarily would have been.

[fol. 51] Q. Out of Tucumcari?

A. No; out of Campana.

Q. I am talking about Tucumcari down to Glen Reo, was there any loss in the cattle there?

A. No; just whatever there would be on that length of time. We had a good run from Tucumcari down there. Of course there was some loss, but no extraordinary loss. Same as it would be on that same trip.

Q. What would be the ordinary loss in a movement of that kind?

A. Yes, sir.

Q. Get the ordinary shrink?

A. Yes, sir.

Mr. Bleakmore: That's all.

Redirect examination.

By Mr. Suits (attorney for plaintiffs):

Q. The cattle had stood in the cars at Tucumcari from 6:30 in the evening of January 6th, 1920, until the next morning about 8 o'clock?

A. Yes, sir.

Q. Something over 12 hours?

A. More than 12 hours there.

Q. Would that fact have started extra shrinkage or caused any extra shrinkage?

A. Standing in the cars?

Q. Yes.

[fol. 52] A. Yes; the fact that the cattle were in the cars for that length of time would cause some shrinkage.

Q. What effect does standing still on a side-track have on cattle?

A. Very bad effect. Cattle lie down and tramp on each other. If they are traveling they will stand up and keep on their feet when running. Cattle suffer more standing still than they do running.

Recross-examination.

By Mr. Bleakmore (attorney for defendant):

Q. You told the jury a while ago that you asked the agent out there to keep the cattle in the cars and not unload them at Tucumcari at all, didn't you?

A. Yes sir, I did.

Q. And you were in charge of those cattle?

A. I was.

Redirect examination.

By Mr. Suits (attorney for plaintiffs):

Q. But it would have taken the entire night to have unloaded them and loaded them back?

A. It would have taken at least half of the night, and they was going out in the morning, and I told the agent at the time that to unload them that night and load them back again they would be [fol. 53] practically the entire night running them in and out of those cars.

Q. What effect would that have had on the cattle, different from standing in the cars?

A. I figured it would be harder on them than to leave them standing.

Mr. Suits: That's all.

(Witness excused.)

[fol. 54] E. H. JOHNSON, having been duly sworn as a witness on behalf of the plaintiffs, testified as follows:

Direct examination.

By Mr. Suits (attorney for plaintiffs):

Q. State your name?

A. E. H. Johnson.

Q. Mr. Johnson, you know Frank Griffith here?

A. Yes, sir.

Q. How long have you known him?

A. Oh, I judge 7 or 8 years.

Q. Do you remember the shipment of cattle which Alexander and Griffith shipped into the Oklahoma City market from Campana, New Mexico, in January 1920?

A. Yes, sir.

Q. Did you see those cattle?

A. Yes, sir.

Q. What business are you engaged in?

A. Commission business.

Q. At the Oklahoma City market?

A. Yes, sir.

Q. How long have you been here on this market, Mr. Johnson?

A. Been here a little over 10 years.

Q. How long have you been in the cattle business?

A. Lifetime.

Q. All your life. What is the commission business; what does a man do in the commission business here?

A. Well, I figure the commission business is a man that serves the public in trying to protect the outside man that is in the cattle business, for the benefit of the packers, selling cattle.

[fol. 55] Q. As a middleman between the cattle-shipper and the packers?

A. Yes, sir; and also between the man that ships the cattle to the market and the speculating dealers that buys cattle to go back to the country.

Q. Through your experience in the cattle business and on the markets, Mr. Johnson, are you able to determine from the looks of cattle and their attpearance, what effect it will have upon their selling qualities when they are placed upon the market?

A. Well, you couldn't tell exactly, but everything goes into it, and one of the things that goes into it is the condition, in regard to the prices and in regard to how gaunt they are, and things that way. That is just some of the things.

Q. Does that have an effect upon their selling qualities?

A. Yes, sir; it does to a certain advantage from the packer standpoint. That is one of the main conditions from the packer standpoint, and also from the stocker standpoint. There is a difference between stocker and packer cattle.

Q. What is the difference between stocker and fat cattle?

A. Stocker cattle sell for the purpose of going back to the country, and fat cattle are cattle that are supposed to be finished out for packer purposes.

Q. You say you saw these cattle when they came in here from New Mexico?

A. Yes, sir.

Q. Tell the jury what condition those cattle was in?

A. Well, the only thing that I could say, that the cattle was just bruised and was awful gaunt, and never took hardly any fill that I remember.

[fol. 56] Q. Wouldn't take any fill at all here?

A. No sir, they didn't.

Q. Did the appearance of them have any effect, when put on the market?

A. Well, yes sir, six bits to a dollar a hundred, from packers' standpoint.

Q. Who did you sell them to?

A. Wilson & Company bought them.

Q. They were fat cattle for packers?

A. They were supposed to be fat. They didn't hardly look fat when they got here. They were fat cows, or what we would call fat cows on this market.

Q. And you think their appearance would range from six bits to a dollar?

A. Well, that is something that is hard to determine exactly, but I just figure that would make that much difference, anywhere from six bits to a dollar a hundred.

Q. That is, by reason of stale and stupid appearance?

A. No; just caused from the bruises and jams they had on the road in the cars, more than anything.

Q. Were those cows bruised and scarred up?

A. Yes, sir. Several of them you could see where they were bruised, where there would be swelled placed upon them where they had been jammed in the cars.

Mr. Bleakmore: Move to strike the testimony of this witness with regard to bruises and things of that kind. Isn't any allegation of

any damage of that kind in the petition and no allegation of rough handling.

Mr. Suits: I am simply talking about the stale and stupid condition upon the market, and all damages of that kind would affect the appearance of the cattle on the market.

The Court: Overruled.

Mr. Bleakmore: Exception.

[fol. 57] Q. Mr. Johnson, the evidence so far shows that these cattle were loaded at Campana, New Mexico, a station about 30 to 40 miles out of Tucumcari. They were loaded somewhere about 4 o'clock in the afternoon—4 or 5 o'clock—on January 6th, 1920, and they were brought down and reached Tucumcari about 6:30 or 7 o'clock, and stood in the cars there until 8 something next morning; then they were taken from Tucumcari to Glen Reo, a distance of 40 miles, reaching Glen Reo at 9:30 or 10 o'clock, and were probably unloaded about noon, and remained in the pens at Glen Reo—stock-pens—from noon on January 7th, 1920, until the afternoon of January 9th, 1920, in the pens there more than 50 hours at Glen Reo. Then they were loaded and brought from Glen Reo to Amarillo, Texas, leaving Glen Reo about 9 or 9:30 p. m. and arriving at Amarillo about 10:30 p. m., where they were again unloaded in the stockyards at Amarillo and kept there for 24 hours. They were then re-loaded and brought to market at Oklahoma City, arriving here on the 12th. What, in your judgment, would be the extra shrink over and above the normal shrink, on cattle handled in that manner?

A. Well, you couldn't hardly—all you could do is just make an estimate of it in regard to shrink on any animal in that respect, because we know that their natural shrink on a shipment runs anywhere from 40 to 50 pounds. That is just on one shipment, if they get a good run and everything, they will shrink that much. In that distance, I would figure, where they was handled like that, 4 or 5 days—say 6 days from the time they were loaded until they was marketed, I would figure the shrink would be anywhere from 60 to 75 pounds.

[fol. 58] Q. That is, over and above normal shrink?

A. Yes, sir. Because I believe it takes just as long to put, when it is a normal shrink, to put the loss back on a cow brute as it does to take it off, and after they get below that they go to shrinking.

Q. And it would take that much longer to put back that excess shrink?

A. I say after that normal shrink comes on, then they go to shrinking in flesh, and it is all a guess in telling how long it will take to put that back; but just the ordinary shrink from a shipment, say on the road one or two hours, it will take just that long to put that fill back on them again.

Q. Did you sell those cattle for Mr. Griffith?

A. No, sir. Robert Johnson sold them. I was there and sorted the cattle and weighed the cattle.

Mr. Suits: Take the witness.

Cross-examination.

By Mr. Bleakmore (attorney for defendant):

Q. You say these cattle were packer cattle, sold to the slaughter-house and slaughtered?
A. Yes, sir.
Q. And the effect of their appearance, you told Mr. Suits, wouldn't have anything to do with the price paid for them, if they were sold as packers; is that right?
A. No, sir. I said that the bruises and things on them would make a difference, I would figure, anywhere from seventy-five cents to a dollar a hundred.
[fol. 59] Q. How many of these cattle did you look to see and ascertain whether they were bruised?
A. Well, I never looked at each and every one of them. I would figure, though—
Q. How many did you look at, would you say?
A. I would say there was as many as 25 anyhow that was badly bruised.

Mr. Bleakmore: I think that's all.

Mr. Suits: No further questions.

(Witness excused.)

[fol. 60] FRANK GRIFFITH, plaintiff, having been first duly sworn, testified, as a witness on behalf of plaintiffs, as follows:

Direct examination.

By Mr. Suits (attorney for plaintiffs):

Q. You are one of the plaintiffs in this case, are you?
A. Yes, sir.
Q. Who is the other plaintiff—Mr. L. D. Alexander?
A. Yes, sir; L. D. Alexander.
Q. Was Mr. Alexander associated with you in the purchase of these cattle?
A. Yes, sir.
Q. And he is one of the plaintiffs in this suit?
A. Yes, sir.
Q. Mr. Griffith, what business are you engaged in?
A. In buying and selling cattle.
Q. How long have you been buying and selling cattle?
A. About 25 years.
Q. During that time, have you been shipping to Oklahoma City here?
A. Yes, sir.
Q. During the months of December, 1919, and January, 1920,

did you have any dealings with Grover B. Hill, who was on the witness-stand here a while ago.

A. Yes, sir.

Q. What transaction did you have with him?

A. Well, we bought a good many cattle thru him.

[fol. 61] Q. Did you buy a herd of cattle located somewhere near Roy and Middlewater, New Mexico?

A. Yes, sir.

Q. Was that herd of catle purchased thru Grover B. Hill?

A. Yes, sir.

Q. From whom?

A. Ed. Mitchell.

Q. How many cattle in that herd?

A. There was supposed to be 600, but I think there was around 560 or something like that.

Q. Were they all together?

A. Not in the same pasture, no.

Q. How far apart were they?

A. About 10 miles.

Q. What was done with those cattle, Mr. Griffith?

A. They were shipped here to Oklahoma City to market.

Q. From what places in New Mexico were they shipped?

A. Roy and Campana.

Q. How many did you ship from Roy, if you know?

A. 337.

Q. How many from Campana?

A. 227.

Q. When was that shipment made from Roy?

Mr. Bleakmore: Objected to by the defendant, as incompetent, irrelevant and immaterial; nothing to do with this case at all.

The Court: I will let him testify to it.

Mr. Bleakmore: Defendant excepts.

A. They was loaded on January the 3rd, 1920.

[fol. 62] Q. Were you present when the others were loaded, at Campana?

A. No, I wasn't there.

Q. Mr. Hill handled those for you?

A. Yes, sir.

Q. Before you purchased this herd of cattle, did you take up with the officials or any of the officers of the Rock Island the question of handling them for you in Oklahoma City?

A. Yes, sir.

Q. Who did you take it up with?

A. Mr. Peterson, their livestock agent at Amarillo.

Q. That was before you purchased these cattle?

A. Yes, sir.

Q. What were you advised with reference to the transportation of the cattle, before you purchased them?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: I will let him testify.
Mr. Bleakmore: Defendant excepts.

A. Well, it was getting late and weather was getting cold and cattle would shrink, and I called on Mr. Peterson, and it was quite a shipment and cars hard to get at that time, and I took it up with Mr. Peterson to find out in how many days he would want to get that many cars over there so as to get the cattle right out in case I bought them.
Q. How many cars would it have taken?

Mr. Bleakmore: Comes the defendant and moves to exclude the answer of the witness, as incompetent, irrelevant and immaterial.
The Court: It will be overruled.
Mr. Bleakmore: Defendant excepts.

[fol. 63] A. I think we had 24 loads.
Q. How many cars were used in the shipment of this bunch from Campana?
A. 9 I think.
Q. After having had this conversation with Mr. Peterson, livestock agent at Amarillo, did you then purchase this herd of cattle—those two herds?
A. Well, it was several days after. I went over and looked at the cattle and didn't buy them that day, and I came back and after I found out he promised me the cars and everything was all right, I wired that I would buy the cattle and take them.
Q. Did Mr. Peterson promise the cars to you?
A. Yes, sir;——

Mr. Bleakmore: The defendant objects, as incompetent, irrelevant and immaterial.
The Court: Overruled.
Mr. Bleakmore: Exception.

A. —or I wouldn't have bought the cattle.
Q. Do you remember just when you bought the cattle,—what date?
A. I think I wired him on the last day of December, 1919, is when I wired him that I would take the cattle at his price.
Q. Do you mind telling the jury how much you paid for those cattle, approximately?
A. I don't remember whether it was 71½ or 72½. It figured around 48 thousand, I know that.
Q. 48 thousand?
A. 45, or something like that.
Q. After you had bought these cattle, did you have any further conversation with Mr. Peterson?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and im-
[fol. 64] material.
The Court: Overruled.
Mr. Bleakmore: Exception.
A. Nothing only I had talked to him about to be sure and get the

cars, that we was going over to load the cattle, and I think we wired him.

Q. In talking to Mr. Peterson the first time about furnishing cars for the cattle, what did he say about furnishing them, and did he tell you he would furnish them or say he would have to take it up with somebody?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.
The Court: Overruled.
Mr. Bleakmore: Defendant excepts.

A. He said cars was a little hard to get and that he wouldn't promise me at that time because it might take 8 or 10 days to get the cars, he would have to take it up with El Reno before he could make me any certain promise.
Q. Did he at any subsequent time state to you that he would furnish cars?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial and leading.
The Court: Overruled.
Mr. Bleakmore: Exception.

A. Well, nothing only I named the day *the day* I wanted them, and he said the cars would be there.
Q. Did you say anything to Mr. Peterson as to how you wanted to ship those cattle,—that is, the two bunches?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and im-[fol. 65] material.
The Court: Overruled.
Mr. Bleakmore: Exception.

A. Well, we had arranged to load part of them one place and part at the other—Middlewater and Roy—and then consolidate them at Tucumcari.

Mr. Bleakmore: Move to exclude the answer of the witness, as incompetent, irrelevant and immaterial.
The Court: Overruled.
Mr. Bleakmore: Exception.

Q. Was there anything said about the furnishing of cars for the entire shipment at the same time?

Mr. Bleakmore: Object,—incompetent, irrelevant and immaterial.
The Court: Overruled.
Mr. Bleakmore: Exception.

A. Yes, sir. He agreed to have them there so I could load the cattle both the same day and come into Tucumcari about the same time so they could all come into Oklahoma City on the same train.
Q. How were the cars furnished?
A. Well, they furnished 14—13 or 14—at Roy, and they couldn't furnish them at Middlewater.

Q. What did you do with the shipment at Roy?
A. Loaded them out.
Q. When?
A. On the 3rd of January, the day they was ordered.
Q. Were you there?
A. Yes, sir.
[fol. 66] Q. Did you come with the shipment on the 3rd of January?
A. Yes, sir.
Q. What time did you leave Roy?
A. I think about 4 or 5 o'clock in the evening somewhere. It was late in the afternoon.
Q. Where is Roy with respect to Tucumcari?
A. It is about 45 miles northwest, on a branch called the Dawson Branch.
Q. Where is Middlewater; where is it located?
A. Middlewater is on the main line of the Rock Island road, between Dalhart and Tucumcari.
Q. Where is Campana?
A. Campana is on the Dawson Branch, out of Tucumcari about 30 miles I judge.
Q. Is it on the same branch as Roy?
A. Yes, sir.
Q. At the time these negotiations were going on with Peterson, was it your intention to load the last bunch at Middlewater or Campana?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.
The Court: Overruled.
Mr. Bleakmore: Exception.

A. Well, we was going to load them there until we found out they couldn't furnish the cars, and we finally got the cars off of the Southwestern there. I don't know whether they was Rock Island cars or what they were. I wasn't there when them cars went out.
[fol. 67] Q. Was that the reason they were taken over to Campana to be loaded, then?
A. Yes, sir.
Q. Were you ready to load both bunches of cattle on the 3rd. day of January, if you could have gotten cars?
A. Yes, sir.

Mr. Bleakmore: Object to that, as incompetent, irrelevant and immaterial.
The Court: Your cause of action isn't failure to furnish cars, it it?
Mr. Suits: No.
The Court: I don't think that would be proper.
Q. I will ask you to state, if you know, what the usual, customary time for transportation of livestock from Tucumcari to Oklahoma City is?
A. Well, this is the only deal I ever had over there. I really don't

know exactly. I suppose good running time, 30 or 35 hours, where a man would have as many as 10 cars. Where a man would only have two cars and would have to go local, no telling how long it would take them.

Q. Where were you, Mr. Griffith, when that shipment reached Oklahoma City?

A. I was here.

Q. Do you know what day it reached Oklahoma City?

A. They came in on the morning of the 12th.

Q. Were they sold on that day?

A. Yes, sir.

Q. What was their condition?

A. Well, they was pretty badly drawn.

[fol. 68] Q. Well, go ahead and describe their condition?

A. Well, they was shrunk bad, and drawn and bruised.

Q. Did you know what became of them or what caused this delay?

A. No, not until after they got to Amarillo I don't think I heard anything about them.

Q. The appearance that they presented upon the market here on the 12th, would that effect them in any way when they were placed upon the market?

A. Yes, sir.

Q. You have sold a good many cattle on the market here, haven't you?

A. Yes, sir.

Q. And other markets, too?

A. Yes, sir.

Q. What effect will the condition such as these cattle were in when they reached the Oklahoma City market, have upon their selling qualities?

A. Well, in all cattle and cows, you know, sometimes they are jammed. These were jammed around, handled and jammed and covered with bruises, you know, on that long trip, and all jaded and fagged, you know, and this hurts them anywhere from 25 cents to 2 or 3 dollars a hundred from packers' standpoint.

Q. How much were these cattle hurt in price by reason of their appearance when they reached the Oklahoma City market?

A. Well, that one claim, appearance and looks, around 25 or 50 cents a hundred.

[fol. 69] Q. In your judgment, they would bring that much less than that if they had come thru in the usual and customary time?

A. Yes; easily that much.

Q. Assuming those cattle were loaded at Campana about 4 o'clock in the afternoon on January 6th. and reached Tucumcari about 6:30 and stood on the cars from 6:30 p. m. January 6th, until something after 8 a. m. the morning of January 7th, then they pulled out and were taken to Glen Reo, reaching there about 9:30 or 10 o'clock, were unloaded somewhere between that time and noon, and were kept in the pens all of the balance of January 7th and night of January 7th, all day January 8th and night of January 8th, and on January 9th up until 4 o'clock in the afternoon, and were then re-

loaded and got out of Glen Reo about *about* 9:30 p. m. that night, and reached Amarillo about 11 or 11:30 on the night of January 9th, were unloaded and kept in the pens until about the same time the next night, when they were re-loaded and shipped to the Oklahoma City market, arriving here on the morning of the 12th. What, in your judgment, would be the excess shrink, over and above the normal shrink, by reason of the handling those cattle received?

A. Well, it would run from 50 to 75 pounds.

Q. How many cattle were in this shipment?

A. 227.

Q. Did you have them sold upon the market here?

A. Yes, sir.

Q. Before I get to that, though. After they left Amarillo, did you get word when they had left there?

A. Yes, sir.

[fol. 70] Q. When did you figure they would reach the Oklahoma City market from Amarillo?

Mr. Bleakmore: Objected to by the defendant, as incompetent, irrelevant and immaterial.

The Court: Objection sustained.

Q. Well, did you undertake to locate the cattle between Amarillo and Oklahoma City to see whether they were delayed or not between those points?

A. Yes; I talked to the dispatcher at El Reno several times about the shipment.

Q. About what?

A. About the shipment, if he knew anything.

Q. What was the reason for talking to this dispatcher?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Sustained. Just let him state what he did.

Q. State what you did, then?

A. I just called the dispatcher. I couldn't hear anything from the cattle until they got to Amarillo, and I figured they ought to be in here, you know, and I just called him up and asked if he knew where they were at, and I never could get any satisfaction.

Q. Did you know when they reached El Reno?

A. Yes, sir.

Q. How did you know?

A. Well, I called the yardmaster over there.

Q. What did he say?

A. I called him along in the evening of the 11th, and he said the cattle would be due in there about 8 or 9 o'clock that night—night [fol. 71] of the 11th—and, of course, didn't hear anything further until next day they came in here about 8:30 next morning. I don't know when they was in El Reno.

Q. Do you know whether these cattle were unloaded between Amarillo and Oklahoma City?

A. No, I don't. I don't think they were.

Q. You were here when they were sold upon the market?
A. Yes, sir.
Q. Were you present when the cattle were sold?
A. Yes, sir.
Q. To whom were they sold?
A. Wilson & Company?
Q. What commission company handled them for you?
A. Witherspoon & McMullen.
Q. Did they furnish you a statement as to what the cattle sold for?
A. Yes, sir.
Q. Did you know what the cattle sold for?
A. Yes, sir.
Q. Did this statement which they furnished you show or contain the transaction that took place between you and the Witherspoon & McMullen Livestock Commission Company?
A. Yes, sir.

Paper is here marked by the reporter, for identification, Plaintiff's Exhibit "A".

Q. I hand you Exhibit "A", and ask you to state what that is?
A. That is account of sales.
Q. Furnished by the Witherspoon-McMullen Commission Company?
A. Yes, sir. That is a duplicate of it.

[fol. 72] Mr. Suits: We offer in evidence Account Sales, Plaintiffs' Exhibit "A," showing the transaction that took place between plaintiffs and the Witherspoon Livestock Commission Company.

There being no objection, said exhibit is received in evidence and read to the jury, a true copy thereof being then and now as follows:

PLAINTIFF'S EXHIBIT "A"

Witherspoon-McMullen Live Stock Commission Company

Cattle, Hogs, Sheep

113-114 Live Stock Exchange Bldg.

Oklahoma City, Okla., Jan. 12, 1920.

Sold for account of L. D. Alexander.
Shipped from Roy N. Mex. P. O., Englewood, Kans.

Purchaser	Cattle	Hogs	Sheep	Weight	Dock: Sows	Dock: Stags	Pounds	Price
Wilson & Co.	39 C	.....	.....	32,840	585	.....	4,680	8.00
"	188	.....	.....	158,490	2,820	.....	28,300	10.00
	227			181,330				

Amount 2,627.20 Total
15,849.00
18,476.20

328.80

No. cars	Weight	Rate	Amount
8	22,000	38	668.00
Feed & Care Amarillo,			24.00
Bedding,			8.00
W. L.			20.97
1	22,000	38	83.60
Feed Glenreo, Tx.			79.40
Feed & Bedding, Am.			4.00
War Tax,			5.01
			893.78

Deposited —— —, ——.
Credit, ——.
Use of —— ——.

Freight and back charges	893.78
Yardage,	68.10
Hay, 27 Pounds,	30.78
Alfalfa, — Pounds,	.....
Corn, — Bushels,	.....
Inspection & Insurance,	1.80
	994.46
Commission,	157.80
	1,152.26
Net Proceeds, E. & O. E.,	17,323.94

Cash, ——.
Cr., ——.

[fol. 73] Q. Mr. Griffith, were you charged anything by the Railroad Company for feed at Glen Reo, New Mexico?

A. Yes, sir.

Q. Do you remember how much?

A. I think $79.00; something like that.

Q. $79.40, wasn't it?

A. Yes.

Q. You paid that, did you?

A. Yes, sir.

Q. In addition to the freight charges?

A. Yes, sir. We put in about 25 or 30 bundles of feed we had there stacked up in the cars for bedding and feed, that we had bought there, besides $24.00 that was fed them in the yards.

Q. Have you been out to Tucumcari a good many times?

A. Yes, a good many times.

Q. Do you know whether the train crews run from Tucumcari into Amarillo, Texas?

A. Yes, sir.

Mr. Bleakmore: Objected to by the defendant, as incompetent, irrelevant and immaterial.

(No ruling.)

Q. Is there any change in the train crews between the time they leave Tucumcari and the time they arrive at Amarillo?

A. No, sir.

Q. They run right through?

A. Yes, sir.

Q. Is there any change in the train crews on trains leaving Amarillo for Oklahoma City?

A. Yes.

[fol. 74] Q. Where?

A. Sayre, Oklahoma; and El Reno, too, I think.

Q. Now, the train crews taking freight trains out of Amarillo, they run to what town before there is any change made in the crews?

A. Sayre, Oklahoma.

Q. There is no change made at the line between Texas and Oklahoma, is there?

A. No, sir.

Q. Is there any change made at the line between—at the state line between New Mexico and Texas?

A. No, sir.

Q. So that in your experience in riding over those lines there between Tucumcari, New Mexico and Oklahoma City, there is no change made in the train crews by reason of the state line at Texas and New Mexico and Texas and Oklahoma?

A. Not as I ever knew of. I never knew of it if there was.

Q. Where did you pay the freight on these 9 cars of cattle?

A. Here in Oklahoma City.

—Papers are here marked by the reporter, for identification, Plaintiffs' Exhibits "B," "C," "D," "E," "F," "G," "H," "I" and "J"—

Q. (Handing papers to witness)—I will ask you to examine these documents and state whether those represent freight bills covering each separate car?

A. Yes, those are the expense bills—freight, and yardage and stuff furnished by the Stockyards Company.

—Thereupon, said Exhibits "B" to "J", both inclusive, are by the plaintiffs offered in evidence, and, there being no objection, the same are received in evidence, true copies of each thereof, in their order, being then and now as follows:

[fol. 75] PLAINTIFFS' EXHIBIT "B"

Freight Bill

Ok. St. Yds. Station, 1/12/20.

Consignee: With McM. Freight bill No. 1116.
Destination: ——. Date of arrival: 1116, 1117, 1118.
Route:

To the Chicago, Rock Island and Pacific Railway Company, Dr., for charges on Articles Transported
Way-billed from Campana, N. M. Way-bill date and No., F 20, 1/7. Full name of shipper, L. D. Alexander. Car initials & No., R. 116182.
Point and date of shipment, by Tucumcari ——. Connecting line reference, ——. Previous way-bill references, ——. Original car initials & No., ——.

Number of packages and marks	Weight	Rate	Freight	Advances	Total
Cattle	22,000	38	8360	100	Bed
Glen Rio W. B. F 4 1/9/20 F/C	.....	..	....	7,940	...
Amarillo W. B. 137 1/11/20 F/C	.....	..	....	300	16700
Total prepaid				$8,240	501
Total					17201

Received payment —— —, 191–. —— ——, Agent.
(Stamped on face: Oklahoma National Stock Yards Co. Paid Jan. 13, 1920.

[fol. 76] PLAINTIFFS' EXHIBIT "C"

Freight Bill

Ok. St. Yds. Station, 1/12/20.

Consignee: With McM. Freight bill No. 1133.
Destination ———. Date of arrival: —— —.
Route: ——.

To the Chicago, Rock Island and Pacific Railway Company, Dr., for charges on articles transported
Way-billed from Campana, N. M. Way-bill date and No., 28/7/20. Full name of shipper,, L. D. Alexander. Car initials and No. 58900.
Point and date of shipment, ——. Connecting line reference, ——. Previous way-bill references, ——. Original car initials & No. ——.

Number of packages and marks	Weight	Rate	Freight	Advances	Total
Cattle	22,000	28	8360	100	Bed
Amarillo W. B. 129	1/11	F/C	....	300	...
Total prepaid				$400	8760
					262
Total					....

Received payment ——, —, 191–. ——, Agent.
(Stamped on face: Oklahoma National Stock Yards Co. Paid Jan. 13, 1920.)

[fol. 77] PLAINTIFFS' EXHIBIT "D"

Freight Bill

Ok. St. Yds. Station, 1/12/20.

Consignee: With McM. Freight Bill No. 1127.
Destination: ——. Date of Arrival: 11/28.
Route: ——.

To the Chicago, Rock Island and Pacific Railway Company, Dr., for Charges on Articles Transported

Way-billed from Campana, N. M. Way-bill Date and No., 25, 1/7. Full name of shipper, L. D. Alexander. Car initials & No., CS1183.
Point and Date of Shipment, ——. Connecting Line Reference, ——. Previous Way-bill References, ——. Original Car Initials & No., ——.

Number of packages, articles, and marks	Weight	Rate	Freight	Advances	Total
Cattle	22,000	38	8,360	100	Bed
Amarillo W. B. 132 1/11 F/C	.....	..	....	300	
				400	8,760
					262
Total					9,022

Total Prepaid, ——.
Received Payment, —— —, 191-. —— ——, Agent.
(Stamped on Face: Oklahoma National Stock Yards Co., Paid Jan. 13, 1920.)

[fol. 78]

PLAINTIFFS' EXHIBIT "E"

Freight Bill

Consignee: With McM. Freight Bill No. 1129. Ok. St. Yds. Station, 1/12/20.
Destination: ——. Date of Arrival: 11/30.
Route:

To the Chicago, Rock Island and Pacific Railway Company, Dr., for Charges on Articles Transported

Way-billed from Campana, N. M. Way-bill Date and No. 26, 1/7/20. Full name of Shipper, L. D. Alexander. Car Initials & No., LW8271.
Point and Date of Shipment, ——. Connecting Line Reference, ——. Previous Way-bill References, ——.
Original Car Initials & No., ——.

Number of packages, articles, and marks	Weight	Rate	Freight	Advances	Total
Cattle					
Amarillo W. B. 131 1/11 F/C	22,000	38	8,360	100	Bed
	.....	..	....	300	
					8,760
					262
Total					9,022

Total Prepaid, $——.
Received Payment, —— —, 191-. —— ——, Agent.
(Stamped on Face: Oklahoma National Stock Yards Co., Paid Jan. 13, 1920.)

[fol. 79] PLAINTIFFS' EXHIBIT "F"

Freight Bill

Ok. St. Yds. Station, 1/12/20.

Consignee: With McM. Freight Bill No. 1131.
Destination: ——. Date of Arrival: 11/32.
Route: ——.

To the Chicago, Rock Island and Pacific Railway Company, Dr., for Charges on Articles Transported

Way-billed from Campana, N. M. Way-bill Date and No., 27, 1/7/20. Full Name of Shipper, L. D. Alexander. Car Initials & No., GNRIC20.
Point and Date of Shipment, ——. Connecting Line Reference, ——. Previous Way-bill References, ——. Original Car Initials & No., ——.

Number of packages, articles, and marks	Weight	Rate	Freight	Advances	Total
Cattle	22,000	38	8,360	100	Bed
Amarillo W. B. 1/11/20 F/C.....	.....	..	....	300	
				400	8,760
					262
Total.....					9,021

Total Prepaid, $——.
Received Payment, —— —, 191-. —— ——, Agent.
(Stamped on Face: Oklahoma National Stock Yards Co., Paid Jan. 13, 1920.)

45

[fol. 80] PLAINTIFFS' EXHIBIT "G"

Freight Bill

Ok. St. Yds. Station, 1/12/20.

Consignee: With McM. Freight Bill No. 1123.
Destination: ——. Date of Arrival: 11/24.
Route: ——.

To the Chicago, Rock Island and Pacific Railway Company, Dr., for Charges on Articles Transported

Way-billed from Campana, N. M. Way-bill Date and No., F. B. 1/7. Full Name of Shipper, L. D. Alexander. Car Initials & No., GM8038.
Point and Date of Shipment, ——. Connecting Line Reference, ——. Previous Way-bill References, ——. Original Car Initials & No., ——.

Number of packages, articles, and marks	Weight	Rate	Freight	Advances	Total
Cattle	22,000	38	8,360	100	Bed
Amarillo W. B. 1/11/20				300	8,760
				400	262
Total					9,022

Total Prepaid, $——.
Received Payment, —— —, 191-. —— ——, Agent.
(Stamped on Face: Oklahoma National Stock Yards Co., Paid Jan. 13, 1920.)

[fol. 81] PLAINTIFFS' EXHIBIT "H"

Freight Bill

Ok. St. Yds. Station, 1/12/20.

Consignee: With McM. Freight Bill No. 1125.
Destination: ——. Date of Arrival: 11/26.
Route: ——.

To the Chicago, Rock Island and Pacific Railway Company, Dr., for Charges on Articles Transported

Way-billed from Campana, N. M. Way-bill Date and No., 24, 1/7/20. Name of Shipper in Full, L. D. Alexander. Car Initials & No., AP37299.
Point and Date of Shipment, ——. Connecting Line Reference, ——. Previous Way-bill References, ——. Original Car Initials & No., ——.

Number of packages, articles, and marks	Weight	Rate	Freight	Advances	Total
Cattle	22,000	38	8,360	100	Bed
Amarillo W, B. 1/11 F/CN.....				300	8,760
				400	262
Total.....					9,022

Total Prepaid, $——.
Received Payment, —— —, 191-. —— ——, Agent.
(Stamped on Face: Oklahoma National Stock Yards Co., Paid Jan. 13, 1920.)

[fol. 82]

PLAINTIFFS' EXHIBIT "I"

Freight Bill

Ok. St. Yds. Station, 1/12/20.

Consignee: With McM. Freight Bill No. 1121.
Destination: ——. Date of Arrival: 11/22.
Route: ——.

To the Chicago, Rock Island and Pacific Railway Company, Dr., for Charges on Articles Transported

Way-billed from Campana, N. M. Way-bill Date and No, 22, 1/7. Full Name of Shipper, L. D. Alexander. Car Initials & No., LN19596.

Point and Date of Shipment, by Tucumcari. Connecting Line References, ——. Previous Way-bill References, ——. Original Car Initials & No. ——.

Number of packages, articles, and marks	Weight	Rate	Freight	Advances	Total
Cattle	22,000	38	8,360	100	Bed
Amarillo W. B. 1/11/20 F/C				300	8,760
				400	262
Total					9,022

Total Prepaid, $——.
Received Payment, —— —, 191-. —— ——, Agent.
(Stamped on Face: Oklahoma National Stock Yards Co., Paid Jan. 13, 1920.)

[fol. 83] PLAINTIFFS' EXHIBIT "J"

4—785

Freight Bill

Ok. St. Yds. Station, 1/12/20.

Consignee: With McM. Freight Bill No. 1119.
Destination: ——. Date of Arrival: ——.
Route: ——.

To the Chicago, Rock Island and Pacific Railway Company, Dr., for Charges on Articles Transported

Way-billed from Campana, N. M. Way-bill Date and No., 21, 1/7/20. Full Name of Shipper, L. D. Alexander. Car Initials & No., HW8801.
Point and Date of Shipment, by Tucumcari. Connecting Line References, ——. Previous Way-bill References, ——. Original Car Initials & No. ——.

Number of packages, articles, and marks	Weight	Rate	Freight	Advances	Total
Cattle	22,000	38	8,360	100	Bed
Amarillo W. B. 136 1/11/20 F/C.....				300	8,760
				400	263
Total.....					9,023

Total Prepaid, $——.
Received Payment, —— —, 191-. —— ——, Agent.
(Stamped on Face: Oklahoma National Stock Yards Co., Paid Jan. 13, 1920.)

49

[fol. 84] Q. Mr. Griffith, do you know the name of the railway company's line from Tucumcari to the Texas line on the east,—that is, the state line between Texas and New Mexico; do you know the name of the railroad line running between that line and Tucumcari?

A. Well, nothing more than Rock Island, that ever I knew of.

Q. Is that the Chicago, Rock Island & Pacific Railway Company's line?

A. Yes, I suppose it is. That is the name it goes under.

Q. Glen Reo is on the line between New Mexico and Texas, is it not?

A. Yes, sir.

Q. And the railroad running thence from Tucumcari to Glen Reo is the Chicago, Rock Island & Pacific Railway Company?

A. I think so.

Q. The line from Glen Reo then through Texas to the Oklahoma state line is known as the Chicago, Rock Island & Gulf Railway Company; is that it?

A. I think so.

Q. And then from the state line between Texas and Oklahoma on east, is the Chicago, Rock Island & Pacific Railway Company again?

A. Yes, sir.

Q. In all your dealings with the dispatcher at Amarillo and with Mr. Peterson, live stock agent at Amarillo, did they ever state with whom they had to take up matters before they could give you an answer?

Mr. Bleakmore: Defendant objects, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

[fol. 85] A. Yes, sir.

Q. Who did they have to take it up with, did they say?

A. Well, they just told me the dispatcher at El Reno.

Q. At El Reno?

A. Yes.

Mr. Suits: That's all.

Cross-examination.

By Mr. Bleakmore (attorney for defendant):

Q. Mr. Griffith, did you have any agent or representative on that train from Amarillo into Oklahoma City, accompanying those cattle?

A. Did I who?

Q. Did you have a man or agent on that train from Amarillo to Oklahoma City who accompanied these cattle?

A. Yes, I think—I didn't have him, but——

Q. He was on the train as your representative, was he?

A. Well, not as mine.
Q. Whose was he?
A. Mr. Hill I think had him. Man named Mr. Pritchard came with the cattle.
Q. Mr. Hill was acting as your agent?
A. Yes, sir.
Q. In the shipment and loading of these cattle; and you say he got Mr. Pritchard?
A. I think so.
[fol. 86] Q. He was on that train that came into Oklahoma City, with the cattle?
A. He came in here and came down to the Exchange and told me he came with the cattle. Of course I couldn't swear to it, because I wasn't on the train. He had the contract.

Redirect examination.

By Mr. Hall (attorney for plaintiffs):

Q. Had you given Mr. Hill any authority to employ anyone else as your agent to look after those cattle except yourself, Mr. Griffith?
A. No, sir.

Recross-examination.

By Mr. Bleakmore (attorney for defendant):

Q. You say he came in and brought you the live stock contract, did he?
A. Yes.
Mr. Bleakmore: All right.

(Witness excused.)

[fol. 87] WILLIAM E. GRIMES, having been first duly sworn, testified as a witness on behalf of the plaintiffs as follows:

Direct examination.

By Mr. Suits (attorney for plaintiffs):

Q. State your name?
A. William E. Grimes.
Q. What position, Mr. Grimes, do you occupy in the state of Oklahoma?
A. Auditor Corporation Commission.
Q. As auditor of the Corporation Commission, do you have in your department and under your jurisdiction the reports filed by the Chicago, Rock Island & Pacific Railway Company?
A. Yes, sir.

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Defendant excepts.

Q. Is each railroad company doing business in the state of Oklahoma required to file annual report with the Corporation Commission?

A. Yes, sir.

Q. Showing mileage operated and various lines controlled by it?

A. Yes, sir.

Q. The ownership of its subsidiary lines?

A. Yes, sir.

Q. Do you have the report of The Chicago, Rock Island & Pacific Railway Company for the year 1919?

[fol. 88] A. Yes, sir; for the year ending December 31st, 1919.

Q. What does that report show, Mr. Grimes, with respect to the ownership of the Chicago, Rock Island & Gulf Railway Company?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Note our exception.

A. It shows, on page 214, item 7, column J, that the control represents 100 per cent.

Q. What is that report, 100 per cent of what?

A. I understand it to mean 100 per cent of the——

Mr. Bleakmore: Object to *that* he understands it to be.

The Court: If he knows, he can state.

A. (continued). That is line 7, page 214, Schedule 218, of the Rock Island Lines, Annual Report of The Chicago, Rock Island & Pacific Railway Company, filed with the Corporation Commission of the State of Oklahoma, for the period ending December 31, 1919.

Mr. Bleakmore: Move to exclude the answer, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. Check that over and read it, so we will have it in the record.

[fol. 89] A. Well, under the heading "Line Number" is "7"; "Line Reference Number: E"; Class Number —; "Name of Issuing Company and Description of Security Held"—that is the heading—"C. R. I. & G. R'y Company—The"; "Pledged"—under the sub-head "Par value of amount held at close of year" "468,200.00"; "Book value at close of year—$468,200.00"; "Unpledged", under sub-head "Par value of amount held at close of year"—$800.00; "Book value at close of year"—$800.00; "Extent of Control—100 per cent."

Mr. Bleakmore: Defendant moves to exclude the answer of the witness, as incompetent, irrelevant and immaterial.

The Court: Overruled.
Mr. Bleakmore: Exception.

Q. You describe this as being Schedule 218. Will you please state what the title of that schedule is?
A. "Investments in securities of carrier companies affiliated with respondent."
Q. What you have just read to the stenographer comes from the Annual Report of The Chicago, Rock Island & Pacific Railway Company?
A. Yes, sir.

Mr. Bleakmore: Object, and move to exclude the answer.
The Court: Overruled.
Mr. Bleakmore: Exception.

Q. Do you have the annual report of that same Company for the year 1920?
A. Yes, sir.
[fol. 90] Q. I wish you would turn to that report.
A. I also have what is designated here as the "40th Annual Report of The Chicago, Rock Island & Pacific Railway Company and Proprietary Companies for the Fiscal Year Ending December 31, 1919."

Mr. Bleakmore: Move to exclude the last answer of the witness, as incompetent, irrelevant and immaterial.
The Court: Overruled.
Mr. Bleakmore: Exception.

Q. Mr. Grimes, what does that report show with respect to the control of The Chicago, Rock Island & Gulf Railway?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.
The Court: Overruled.
Mr. Bleakmore: Exception.

A. It shows the railroads operated by the C. R. I. & P. Railroad Company, under the name of "Rock Island Lines."
Q. On what page?
A. Page 60; but this here refers to the title page—to the first page—for emphasis.
Q. I wish you would read the title page of this 40th Annual Report of The Chicago, Rock Island & Pacific Railway Company?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.
The Court: Overruled.
Mr. Bleakmore: Exception.

[fol. 91] A. "40th Annual Report of The Chicago, Rock Island & Pacific Railway Company and Proprietory Companies, Fiscal Year Ended December 31, 1919. This Report Embraces the affairs of the Corporation and Results from Operation by The United States

Railroad Administration for the Entire Year, Presented in a Consolidated *Fotd* with the view of continuing the historical and statistical records of the Company, thus affording comparison with the data in preceding annual reports." Now, on page 60, under the head of "Mileage Operated December 31, 1919," under the heading of "The Chicago, Rock Island & Gulf Railway"—"Main Line. Texola, Oklahoma (Texas State Line), to Texas-New Mexico State Line near Glen Reo, Texas. Miles first main track 182.90. Miles of yard tracks and sidings, 22.98." That is under the heading "Rock Island Lines. Mileage operated December 31, 1919," and shows that that portion of the Texas lines was operated by The Rock Island Lines at that time.

Mr. Bleakmore: Comes the defendant and moves to exclude the last answer of the witness, as incompetent, irrelevant and immaterial, and calling for the conclusion of the witness.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. Do you have the report filed by The Chicago, Rock Island & Pacific Railway Company with the Corporation Commission of Oklahoma for the year ending December 31, 1920?

A. Yes, sir.

[fol. 92] Q. What does that report show with respect to the ownership of The Chicago, Rock Island & Gulf Company?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Note an exception.

A. Why, identically the same—"Declaration of Interests," same page and under the same schedule number as that shown in the report for 1919.

Q. All the way through?

A. All the way through, yes sir.

Q. I think, in order to be on the safe side, we had better ask you to introduce or offer in evidence "Schedule 218. Investment in Securities of Carrie- Companies Affiliated with Respondent."

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. Line 7.

A. You want to read this into the record?

Q. Yes.

A. Heading is "218"—that is the schedule number. "Investment in Securities of Carrier Companies Affiliated with Respondent." "Line Number 6."

Q. Is that 6 or 7?

A. It is 6 in this one. Under the head of "Name of Issuing

Company and Description of Security Held" is "C. R. I. & G. Railway Company—The." Under the head of "Par Value of Amount [fol. 93] Held at Close of Year—"468,200.00." "Book Value at Close of Year—$468,200.00." (1)

Q. That is under "Unpledged," is it not?

A. Yes; "Unpledged" and sub-head "Amount Held, etc"—$800.00." Under the sub-head "Book Value Close of the Year—"$800.00." "Extent of Control—100 per cent."

Q. Is that all in that report, Mr. Grimes?

A. Yes, sir; that's all there is on that line.

Mr. Bleakmore: Move to exclude the last answer of the witness, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Note our exception.

Q. Is there anything else in that report, Mr. Grimes?

A. Why, I think nothing else.

Mr. Suits: We now offer in evidence the line read by the witness from the Report of 1920—Annual Report.

Mr. Bleakmore: Object to it, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Mr. Suits: And also the line read from the 1919 Report of the Corporation Commission.

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

(A true copy of the matter above offered is as read into the record by the witness.)

[fol. 94] Q. (Handing paper to witness.) Please state what that is, Mr. Grimes?

A. Report of The Chicago, Rock Island & Pacific Railway Company and Subsidiary Lines, Fiscal Year Ended December 31, 1920.

Q. Does that show the leased lines and the lines operated by the Chicago, Rock Island & Pacific Railway Company?

A. Yes sir. Its own declaration on the title sheet is "This report embraces the affairs of the corporation and the results from operation of the lines during January and February, 1920 by the United States Railroad Administration and for the balance of the year by the corporation, presented in a consolidated form with the view of continuing the historical and statistical records of the Company, thus affording comparison with the data in preceding annual reports." (2)

Mr. Bleakmore: Move to exclude all this, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. What does that report show with respect to the operation of the line of railway known as Chicago, Rock Island & Gulf Railway?

Mr. Bleakmore: Object to that, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Note our exception.

A. It shows, page 61, under the head "Rock Island Lines. Mileage operated December 31, 1920," under the sub-head "Chicago, Rock Island & Gulf Railway" "Texola, Oklahoma (Texas State Line) to Texas-New Mexico state line near Glen Reo, Texas, Mile-
[fol. 95] age: First main track, 182.90. Miles of other tracks and sidings, 23.10."

Mr. Suits: We offer in evidence the statement read by the witness to the court reporter as to the operation of the Chicago, Rock Island & Gulf Railway Company lines, and also the title page of this 41st Annual Report.

Mr. Bleakmore: Object to it, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Mr. Suits: That's all. Take the witness.

Cross-examination.

By Mr. Bleakmore (attorney for defendant):

Q. I want to ask you if those reports show any part of the railroad of the Chicago, Rock Island & Gulf Railway Company in Oklahoma?

A. No, sir.

Q. All shown to be in the state of Texas, is it not,—that is, between the Oklahoma and Texas line and the Texas and New Mexico line?

A. Well, I haven't the report of the Texas line, but——

Q. As shown by those reports.

A. No, sir; they don't show it.

Q. Chicago, Rock Island & Gulf Railway Company has made no report to the Oklahoma Corporation Commission, has it?

A. No, sir.

Q. Are you prepared to say the amount of stock owned in the years 1919 and 1920 by the Chicago, Rock Island & Gulf Railway
[fol. 96] Company?

Mr. Suits: Objected to, as not proper cross-examination.

The Court: Overruled.

Mr. Suits: Exception.

A. You mean the amount of the par shares of the C. R. I. & G. controlled by the C. R. I. & P.?

Q. No, sir. I asked you if you knew the amount of stock issued

on behalf of the Chicago, Rock Island & Gulf Railway Company, which outstands as capital stock?

A. No, sir.

Q. Do you know whether or not the Chicago, Rock Island & Pacific Railway Company in the years 1919 1920 owned the majority of the stock of the Chicago, Rock Island & Gulf Railway Company?

A. Personally I know that it did, but I don't know what——

Q. You know that it did?

A. Yes, sir.

Q. How do you know it did?

A. Why, by familiarity with the—I have been in the railroad business in Texas about 20 years, and my relations were such that I knew it from my dealings and transactions, they advised me that much.

Q. With the Gulf Railway Company?

A. Yes, sir.

Q. How many shares of stock were issued by that Company?

A. I don't know. I just know that the C. R. I. & P. only stands for a legal excuse for the existence of the Gulf so as to comply with the Texas laws as far as it can by maintaining a separate entity down in Texas.

[fol. 97] Q. You do know, as a matter of fact, that it is a separate corporation in the state of Texas, do you not?

A. Yes, sir.

Q. And you know, as a matter of fact, that under the laws of the state of Texas the C. R. I. & P. cannot operate a road in the state of Texas, don't you?

A. Well, it does do it through its agents down there in Texas.

Q. It does it through its agents?

A. Yes, sir.

Q. In other words, you know, as a matter of fact, that the Chicago, Rock Island & Pacific Railway Company is constantly violating the constitutional provision of the state of Texas in operating its road there, do you?

A. Yes, sir.

Q. You do?

A. Yes, sir.

Q. How do you know it? Tell the Court.

A. Well, I know when I was claim adjuster down there for the M. K. & T. and that with the Rock Island we made an agreement with the adjuster of the C. R. I. & P. with reference to settling grain claims on shipments of grain originating in Chicago and concealed list issued to me and that was supposed to be binding, but his superior in Chicago repudiated it, and he admitted he had instructions from Chicago, and they fired that man over it.

Q. You were claim-adjuster down in Texas?

A. Yes, sir.

Q. And you got all this information as a claim adjuster on some other railroad?

A. Yes, sir.

Mr. Bleakmore: All right, sir.
Mr. Suits: That's all, Mr. Grimes. (Witness excused.)

[fol. 98] Adjournment to November 2, 1922.

Thereupon, the hour of adjournment having arrived and there not being time to complete the hearing of this cause on this day, the jury was by the court duly admonished and excused until tomorrow morning, November 2, 1922, at 9 o'clock.

Proceedings of November 2, 1922

On November 2, 1922, at 9 o'clock a. m., pursuant to adjournment, court duly convened, the jury and all parties were present as theretofore, and the plaintiffs proceeded with further evidence in their behalf, and proceedings were had thereon, as follows, in the order following, to-wit:

[fol. 99] Paper is here marked by the reporter, for identification, Plaintiffs' Exhibit "K".

Mr. Suits: Plaintiffs now offer in evidence their Exhibit "K," being Table 50, showing the schedule and stations along the Rock Island line of railway between Memphis, Tennessee, and Tucumcari, New Mexico, as set out in their official time-table corrected to September 24th, 1922.

Mr. Bleakmore: To which the defendant objects, as incompetent, irrelevant and immaterial.
The Court: Overruled.
Mr. Bleakmore: Defendant excepts.

The original of plaintiffs' said Exhibit "K," so offered and received in evidence, was then and is now as follows:

(Here follows plaintiffs' Exhibit "K," marked side folio page 100)

[fol. 100½] Being title sheet and Table "50" of time-table designated:

"Corrected to September 24, 1922.
Rock Island."

Original inserted in original case-made, it being impractical to make an intelligent typewriten copy of same.

[fol. 101] Thereupon the plaintiffs rest their case in chief.

Whereupon the defendant proceeded with the introductios of evidence in his behalf, and proceedings were had thereon, as follows, in the order following, to-wit:

PLAINTIFFS' EXHIBIT "K".

CORRECTED TO SEPTEMBER 24, 1922

Rock Island

TimeTables

Complete Index of Stations on Pages 7-10
List of Officers and Representatives on Page 3-4

W. J. LEAHY, Assistant Passenger Traffic Manager, CHICAGO
J. A. STEWART, General Passenger Agent, KANSAS CITY

CORRECTED TO SEPTEMBER 24, 1922

Rock Island

TimeTables

Complete Index of Stations on Pages 7-10
List of Officers and Representatives on Page 3-4

L. M. ALLEN, Vice-President and Passenger Traffic Manager
CHICAGO

PLAINTIFFS' EXHIBIT "K".

Rock Island

Merchandise Cars

(For Less than Carload Freight)

THE ROCK ISLAND operates a very complete merchandise car service (covering less than carload shipments) from important shipping centers, including the gateways of Chicago and Peoria, Ill.; St. Louis, Mo.; St. Paul and Minneapolis, Minn.; Memphis, Tenn.; Kansas City and St. Joseph, Mo. and Omaha, Nebr., to points located on and beyond its rails.

The ROCK ISLAND is unique in that with its own rails it serves the broad and rich territory bordered by Lake Michigan and the Mississippi River on the east, the Dominion of Canada on the north, the Rocky Mountains on the west and the Gulf of Mexico and the Republic of Mexico on the south. It also reaches advantageously, over the rails of its connections, the great Empire west of the Rocky Mountains to the Pacific Ocean.

This service means package freight shipments will reach their destination with dispatch and regularity, largely the same as full carload shipments and will insure substantial economy as compared with shipments handled by Express.

Instruct the routing of your less than carload shipments via the ROCK ISLAND and **save money.**

Our agents will cheerfully give you particulars concerning rates and merchandise car schedules.

S. H. JOHNSON,
Vice-President and Freight Traffic Manager.

PRINTED IN THE UNITED STATES. POOLE BROS. CHICAGO

PLAINTIFFS' EXHIBIT "K".

Equipment of all through trains is shown on pages 13 to 24

Table 50 — Memphis, Little Rock, Oklahoma City, Amarillo and Tucumcari — Table 50

603	601	43	45–41	MI	STATIONS (SEE NOTE)	42–46	44	604	602
PM	AM	PM	AM			PM	AM	PM	PM
• 2.30	• 7.00	•10.45	• 9.30	0	LV MEMPHIS, TENN AR	•7.05	•6.00	•3.30	•12.30
					Crosses Mississippi River				
2.48	7.10			3	..BRIDGE JCT. ARK			3.10	12.06
2.58	7.25			9	.....HULBERT		/5.15	8.53	11.53
/ 3.01	/ 7.28			11	.....RICEVILLE....n			/8.47	/11.47
/ 3.06	/ 7.32			14	.....MOUNDS....n			/8.40	11.43
3.11	7.37			16	.....EDMONDSON			8.35	11.39
3.18	7.43			20	.....PROCTOR			8.28	11.33
/ 3.28	7.53			24	.....JONQUIL....n			/8.18	11.27
3.32	8.00			26	.....HETH			8.11	11.23
/ 3.45	/ 8.09		See Note	31	.....WHITMORE			/8.01	/11.07
/ 3.48	/ 8.13			33	.....BLACKFISH....n			/7.58	/11.03
3.53	8.19			34	.....ROUND POUND			7.53	10.58
4.03	8.31			38	.....WIDENER			7.44	10.45
					Crosses St. Francis River				
4.09	8.36			41	.....MADISON			7.37	10.38
4.18	8.46	12.13	10.44	45	....FORREST CITY....	5.30	3.48	7.25	10.27
/	/			49	.....BECKS....n			/	/
					Crosses L'Anguille River				
4.33	9.05			52	.....PALESTINE			7.05	10.10
4.45	9.18			59	.....GOODWIN			6.54	9.58
5.03	9.29			64	.....WHEATLEY			6.41	9.48
5.20	9.50	12.55	11.25	69	LV..BRINKLEY 60..AR	4.45	2.45	6.25	9.30
/ 5.33	/10.05			74	.....EDEN....m			/6.13	/9.16
/	/			76	.....DAGMAR....n			/	/
/	/			81	.....BRASFIELD			/	/
					Crosses Cache River				
5.55	10.16			83	.....BISCOE			5.55	9.02
					Crosses White River				
6.05	10.30	.. e ..		86	..DeVALL'S BLUFF.66....	p	A	5.42	8.55
6.15	10.35		See Note	89	.....MESA 72			5.35	8.50
	1.20			110	AR..STUTTGART..LV			3.50	
6.25	10.50	.. e ..		98	.....HAZEN	p	A	5.25	8.35
/ 6.35	/11.05			92	.....SCREETON			/5.13	/8.25
/ 6.39	/11.10			100	..PRAIRIE CENTER..n			/5.09	/8.21
/ 6.47	11.15	.. e ..		105	.....CARLISLE	p	A	5.05	8.16
/ 6.51	/11.20			108	.....McCREANOR....n			/4.53	/8.05
7.00	11.40	.. e ..		112	.....LONOKE	p	A	4.45	7.55
/ 7.18	/11.50			117	.....METO....n			/4.35	/7.43
7.26	11.58			121	.....KERR			/4.28	7.36
/ 7.34	12.06			125	.....GALLOWAY....n			4.20	/7.29
7.50	12.20		mo	132	NORTH LITTLE ROCK, ARK.	mo		4.05	7.13
					Crosses Arkansas River				
8.00	12.30	3.00	1.20	133	AR..LITTLE ROCK..LV	3.10	12.32	4.00	7.10
PM	1.30	7.15	1.30	133	LV LITTLE ROCK 61 AR	3.00	10.15	3.00	AM
	3.45	9.35	3.45	193	AR. HOT SPRINGS NAT. PK. LV	1.00	7.50	1.00	
	PM	3.10	1.50	133	LV..LITTLE ROCK..AR	11.45	12.22	PM	
			2.08	139	LV. TENTH ST. STA.	11.30			
		/	2.15	142	.....PULASKI	/1118			
		/	2.32	150	.....MAUMELLE....n	/10.57	/11.36		
		/ 3.55	2.38	153	.....PINNACLE	10.51	/11.31		
		/ 4.02	2.46	156	.....NATURAL STEPS....n	10.44	/11.24		
		/ 4.10	2.56	160	.....ROLAND	10.34	/11.16		
		/ 4.27	/ 3.12	167	.....LEDWIDGE....n	/10.16	/10.58		
		/ 4.38	3.22	172	.....FOURCHE	10.04	/10.45		
		4.43	3.27	173	.....BIGELOW	10.02	10.42		
		4.51	3.36	177	.....HOUSTON	9.52	10.31		
		5.08	3.54	184	.....PERRY	9.35	10.17		
		/ 5.19	4.07	190	.....ADONA	9.25	/10.05		
		5.33	4.23	199	.....CASA	9.06	9.48		
		/ 5.42	/ 4.32	204	.....BIRTA	8.54	/9.40		
		5.53	4.50	209	.....OLA 66	8.38	9.24		
		7.20		223	AR..DARDANELLE..LV		2.49		
			/ 4.58	214	.....MICKLES....n	/8.28			
		6.17	5.15	220	.....DANVILLE	8.18	9.06		
		6.26	5.26	224	.....BELLEVILLE	8.07	8.54		
		6.38	5.37	229	.....HAVANA	7.57	8.44		
		/ 6.48	5.50	235	.....WAVELAND	7.42	/8.31		
		7.00	6.03	240	.....BLUE MOUNTAIN	7.30	8.20		
		7.15	6.15	245	.....MAGAZINE	7.15	8.07		
		7.35	6.40	253	AR BOONEVILLE LV	17.05	7.55		
		8.00	7.00	253	LV AR	6.40	7.30		
		8.15	/ 7.15	260	.....BARBER	/6.25	7.15		
		8.25	/ 7.30	264	.....ECHO....n	/6.15	/7.05		
		8.33	/ 7.38	269	.....ABBOTT	/6.05	/6.51		
	/649	8.41	/ 7.45	271	.....MANSFIELD	5.57	6.45	/650	
	Daily	9.00	8.00	280	...HARTFORD, ARK.	5.37	6.15	Daily	
	PM	9.16	/ 8.21	288	...MONROE, OKLA.	/5.12	5.56	AM	
	6.00	9.30	8.40	295	.....HOWE	4.55	5.37	9.12	
	6.18	9.45	9.00	302	.....WISTER	4.35	5.20	8.50	
	/			306	.....VICTOR....n			/	
	/ 6.32			308	.....CASTON....n			/8.34	
	6.42	10.05	eq	312	.....FANSHAWE	eq	4.44	8.25	
	6.55	10.15	eq	317	.....HUGHES	eq	4.36	8.18	
	7.10	10.30	/ 9.45	322	.....RED OAK	/3.45	4.22	8.05	
	/ 7.28			330	.....PANOLA....n			/7.50	
	/ 7.33			334	.....LUTIE....n			/7.39	
	7.42	10.57	10.15	336	.....WILBURTON	3.15	3.59	7.35	
	8.02	11.35	10.48	352	.....HARTSHORNE	2.35	3.15	6.56	
	8.20	11.45	11.00	352	LV HAILEYVILLE 54 LV	2.30	3.10	6.55	
	/ 8.30			356	.....DOW....n			/6.49	
	/ 8.40		/11.29	361	.....ALDERSON	eq	/2.45	/6.32	
	/ 8.58			364	.....KREBS			/6.26	
	9.00	12.10	11.35	367	AR. McALESTER 54. LV	1.55	12.35	6.20	

Continued at top of next column.

47	43	41	MI	STATIONS (SEE NOTE)	42	44	48		
	•7.05	•12.35	•11.55	367	Lv McALESTER 54 AR	• 1.40	•2.10	• 6.10	
	/7.20			374	.....BOLTON....n			/ 5.46	
	7.25	12.55	/12.16	376	.....HAYWOOD	eq	1.41	/ 5.40	
	/7.30			380	.....WHITES....n			/ 5.32	
	7.40	1.17	/12.45	387	.....STUART	eq	1.17	5.17	
	/7.50			391	.....HILL TOP....n			/ 5.07	
	•8.05	•1.45	•1.15	397	.....CALVIN			• 4.55	
	/8.15			402	.....AGUA....n			/12.35	/ 4.45
	/8.22	/2.02		405	.....BILBY....n			/12.27	/ 4.38
	8.35	2.15	1.50	411	....HOLDENVILLE....	12.07	12.15	4.28	
	8.55	2.35	/2.10	419	.....WEWOKA	/11.46	11.55	4.10	
	/9.15	/2.58	/2.25	426	.....LIMA....n	eq	/11.38	/ 3.55	
	9.30	3.05	/2.45	432	.....SEMINOLE	/11.17	11.24	3.43	
	9.45	3.23	c eq	440	....EARLSBORO....	/10.58	11.00	3.28	
	10.00	3.45	3.40	448	AR SHAWNEE 53 LV	10.40	10.40	3.10	
	10.15	3.55	4.00	448	LV AR	10.20	10.15	3.05	
	10.32	4.20	acq	456	.....DALE	c	9.55	2.48	
	/10.36		acq	459	.....SUNNYSIDE....n	c		/ 2.43	
	10.41	4.33	acq	461	.....McLOUD	9.47	9.45	2.38	
	10.52	4.47	acq	466	.....HARRAH	9.35	9.30	2.24	
705	711								706
706	711	11.04	5.02	acq	473	c	9.15	2.10	712
Daily	Daily	/1118	/5.20	acq	479	c	/ 9.00	/ 1.57	Daily
AM	PM	11.35	5.45	5.30	487	AR OKLAHOMA LV	8.45	8.40	1.35	PM
7.00	10.40	11.55	6.10	5.45	487	LV CITY AR	8.30	8.15	1.20	2.25	7.40
7.15		/12.10	/6.20	acq	495	.....COUNCIL	c	/ 8.01	/ 1.04	/ 2.08	7.17
7.25	/11.55	12.22	6.40	acq	501	.....YUKON	cd	/ 7.51	/12.53	1.57	7.06
/7.35		/12.35	/6.55	acq	507	.....BANNER	c	/ 7.35	/12.43	/ 1.45	6.55
8.00	11.48	12.55	7.15	6.50	513	AR EL RENO LV	7.40	7.15	12.25	1.30	6.35
8.40	PM	PM	17.50	7.20	513	LV 44-64 AR	6.50	6.45	AM	PM	6.30
8.57			8.05	7.32	517	.....FORT RENO....n	cdq	6.30			6.16
9.12			8.20	7.45	523	.....CALUMET	cdq	6.17			6.03
9.35			8.45	8.10	534	.....GEARY 46-58		5.55			5.45
10.07			9.05	8.26	543	.....BRIDGEPORT		5.38			5.28
AM			/9.20	/8.40	550	.....McCOOL....n	/ 5.15	/ 5.13			PM
			9.35	8.50	554	.....HYDRO	5.06	5.00			
			9.55	9.15	562	...WEATHERFORD....	4.45	4.40			
			/10.20	9.38	573	...INDIANAPOLIS...n	4.20	/ 4.15			
			10.45	10.05	580	.....CLINTON	3.45	3.40			
			/11.20	/10.27	585	...PARKERSBURG...n	/ 3.20	/ 3.15			
			11.40	10.50	594	.....FOSS	3.05	2.57			
			12.05	11.06	601	.....CANUTE	2.47	2.42			
			12.35	11.26	609	.....ELK CITY	2.30	2.25			
			/12.58	/11.56	616	.....MERRITT....n	/ 2.03	/ 2.05			
			1.15	/12.05	622	.....DOXEY	/ 1.45	1.45			
			1.30	/12.20	627	AR SAYRE LV	1.30	1.30			
			1.45	11.10	627	LV AR	12.45	1.00			
			/2.04	/1.22	635	.....HEXT RANCH....n	/12.26	/12.36			
			2.19	1.43	641	.....ERICK	12.10	12.20			
			2.39	2.00	649	TEXOLA (c. R. I. & G.)	11.50	11.57			
				2.04	650	BENONINE, TEX.	11.45				
			/2.52	2.14	654	.....FULLER....n	/ 11.35	/11.43			
			3.18	2.40	664	.....SHAMROCK	11.05	11.13			
			/3.31		671	.....LELA....n	/10.50	/10.56			
			/3.46	3.10	677	.....RAMSDELL	10.34	/10.35			
			4.13	3.35	687	.....McLEAN	10.05	10.06			
			4.38	4.00	696	.....ALANREED	9.36	9.48			
			/4.55	/4.20	706	.....ROCKLEDGE....n	/ 9.21	/ 9.22			
			5.11	4.34	708	.....JERICHO	9.06	9.06			
			/5.25	/4.48	715	.....BOYDSTON....n	/ 8.50	/ 8.51			
			5.34	4.58	719	.....GROOM	8.41	8.40			
			/5.50	/5.15	727	.....LARK....n	/ 8.26	/ 8.22			
			/6.07	/5.33	735	.....CONWAY	8.09	8.02			
			/6.24	/5.50	744	.....YARNALL....n	/ 7.52	/ 7.42			
			/6.40	/6.09	752	.....ROYAL....n	/ 7.35	/ 7.20			
			17.00	6.30	761	AR AMARILLO LV	7.15	7.00			
			/3.05	PM	761	LV AR	AM	/ 2.25			
			/3.20		766	.....SONCY....n		/ 2.10			
			3.55		773	.....BUSHLAND....n		1.55			
			4.15		781	.....WILDORADO		1.35			
			4.39		794	.....VEGA		1.05			
			/4.55		796	.....ONTARIO....n		/ 1.00			
			5.05		808	.....ADRIAN....n		12.35			
			/5.35		819	.....BOISE....n		/12.07			
			6.00		832	.....GLENRIO....n		11.32			
			6.15		838	LV ..ENDEE, N. M. AR		11.22			
			/6.35		845	.....BARD....n		/11.02			
			6.47		850	.....SAN JON		10.50			
			/7.20		865	.....LESBIA....n		/10.20			
			7.45		873	AR. TUCUMCARI 25-66 LV		9.55			

The Rock Island is your railroad, its problems are your problems, and it needs your co-operation in solving them.

Your future prosperity is largely dependent on the maintenance and development of a successful transportation system.

See table 64

NOTE—All trains will stop at any station between Memphis and Booneville and Shawnee and Tucumcari to let off passengers ticketed by foreign lines, except No. 45, which will not stop to let off passengers between Memphis and Wheatley, except at scheduled stops.

The number opposite name of station refers to number of table where connections are made.

REFERENCE NOTES

• Daily. † Except Sunday. ‖ Stops for meals.
a Stops to take on passengers for California points.
c Stops to let off passengers ticketed through by foreign lines or to or from points west of Sayre.
d Stops to let off passengers from points west of Geary.
e Stops to let off passengers ticketed from Memphis and points east or to take on passengers for points beyond Bigelow and Benton.
/ Stops on signal by Agent or notice to Conductor.
g Stops to take on passengers for Kansas City and beyond when connection is made with No. 32.
h Stops to discharge paying passengers from Little Rock and points west or to take on passengers for Memphis and beyond.
i Stops to receive passengers for points west of Geary at which train stops.
j Stops on signal at Victor (M. P. 306.6) and Limestone (M. P. 340).
k Stops on signal at Cumea, Lucerne and Brown's Spur.
m Stops to take on or let off passengers to or from Hot Springs. n No Agent.
o Stops to take on or let off passengers to or from Memphis or beyond.
p Stops on flag at Lonoke, Carlisle, Hazen and DeVall's Bluff to take on passengers ticketed to or beyond Cairo, Louisville, Cincinnati, Nashville, Chattanooga, Birmingham, Springfield, Mo., and Curruthersville, Mo. q Stops to discharge passengers from Little Rock or beyond.
r Stops to let off passengers from points east of Oklahoma City or take on passengers for points west of Geary.

PLAINTIFFS' EXHIBIT "K".

Equipment of all through trains is shown on pages 13 to 24

Table 51 Little Rock, Hot Springs and Malvern

685–687 Frt. Ex. Sun.	613 Daily	611 Daily	45 Daily	Miles	(SEE NOTE 1) STATIONS	45 Daily	612 Daily	614 Daily	686–688 Frt. Ex. Sun.
am	pm	am	pm			pm	am	pm	pm
.....	k 4.55	e 7.15	1.30	0	LV.....LITTLE ROCK 60.....AR	3.00	k10.00	10.15	.....
.....	7.35	.....	.....	9	LV.....HOT SPRINGS JCT.....AR	.....	.....	.....	.....
.....	7.45	f 8.12	f 7.32	6	.....BERGER.....n	.....	f 9.35	f 9.52	f 2.09
.....	f 8.00	f 8.27	f 7.40	11	.....GUILFORD.....	.....	f 9.27	f 9.44	f 1.59
.....	8.15	f 8.42	f 7.47	15	.....VIMY RIDGE.....	.....	9.17	f 9.34	f 1.49
.....	8.36	f 8.53	f 7.53	18	.....BROOKS.....n	.....	f 9.10	f 9.27	f 1.43
.....	9.02	8.59	8.01	22	.....BAUXITE.....	.....	9.02	9.17	12.56
.....	9.30	9.26	8.11	26	.....BENTON 50.....	2.03	8.52	9.07	12.46
					Crosses Saline River				
.....	12.01	8.10	8.20	33	.....HASKELL 80.....	.....	8.40	8.56	12.01
.....	f 12.18	f 8.14	f 8.23	37	.....OPITZ.....n	.....	f 8.36	f 8.49	f .....
.....	f 12.28	f 8.23	f 8.32	39	.....FRANCWAY.....n	.....	f 8.32	f 8.45	f 10.15
.....	f 12.38	f 8.30	f 8.40	40	.....REYBURN.....	.....	f 8.23	f 8.36	f 10.00
	f			42	AR.....PERNORT.....nLV				f .....
.....	No. 630 Motor	* 8.15	* 7.50	0	LV.....MALVERN 57.....AR	No. 629 Motor	9.15	9.36	No. 615 Motor
.....	.....	f 8.35	f 7.55	2	.....ROCKPORT.....n	.....	f 9.03	f 9.24	.....
.....	.....	8.40	8.10	5	AR.....BUTTERFIELD.....LV	.....	* 8.55	* 9.15	.....
.....	1.05	8.50	8.50	43	LV.....BUTTERFIELD.....AR	.....	8.15	8.35	7.10
.....	f 1.25	f 8.59	f 8.59	47	.....COVE CREEK.....n	.....	f 8.08	f 8.28	f 6.50
.....	f 1.33	f 9.07	f 9.07	52	.....PRICE.....n	.....	f 7.59	f 8.19	f 6.40
.....	f 1.42	f 9.13	f 9.13	54	.....LAWRENCE.....n	.....	f 7.52	f 8.12	f 6.34
.....	1.53	.....	.....	58	.....GULPHA.....n	.....	.....	.....	f 6.20
.....	2.45	9.30	9.45	60	AR..HOT SPRINGS NATIONAL PARK, ARK..LV	1.00	7.40	7.58	6.15
pm	pm	am	pm			pm	am	pm	pm

The numbers opposite name of stations refer to number of table where connections are made.

Table 52 Oklahoma City, Fort Sill, Lawton, Waurika

47–723–703	706 Daily	Miles	STATIONS	706 Daily	704–724–712
am	am			pm	pm
•11.55	7.00	0	LV..OKLAHOMA CITY 80..AR	7.40	.....
f12.10	7.15	8	.....COUNCIL.....	f 7.17	f .....
12.25	7.25	14	.....YUKON.....	7.05	.....
f12.35	f 7.35	20	.....BANNER.....n	f 6.55	f 1.40
•12.55	8.00	26	AR.....EL RENO.....LV	6.35	• 1.20
† 1.00	8.10	26	LV.....49-80.....AR	6.25	†12.10
f 1.06	.....	34	.....POWERS.....	.....	f12.16
1.22	8.27	39	.....UNION CITY.....	5.55	12.00
1.33	8.37	44	.....MINCO.....	5.45	11.50
1.42	8.50	52	.....POCASSET.....	5.30	11.37
1.53	9.15	63	AR.....CHICKASHA.....LV	5.05	11.15
2.00	9.30	63	LV.....CHICKASHA.....AR	4.50	11.05
2.15	9.50	73	.....VERDEN.....	4.35	10.40
† 2.30	10.20	83	AR.....ANADARKO.....LV	4.15	†10.20
† 2.40	10.25	83	LV.....49-84.....AR	4.05	†10.10
f 2.50	.....	89	.....HUNTLEY.....	.....	f 9.52
3.00	10.45	90	.....STECKER.....	3.40	9.42
3.11	11.00	96	.....APACHE.....	3.25	9.28
3.21	11.12	104	.....PARKER.....n	3.13	9.12
3.31	11.18	108	.....RICHARDS SPUR.....n	3.07	9.05
3.45	11.35	112	.....FORT SILL.....	2.50	8.50
3.55	11.45	116	.....LAWTON.....AR	2.40	8.40
4.05	12.01	124	.....GERONIMO.....	2.25	8.17
f 4.15	f 12.12	127	.....JUNCTION CITY.....	f 2.15	8.10
4.30	12.30	134	.....WALTERS.....	2.00	7.45
5.00	.....	.....	.....LIVINGSTON.....n	.....	.....
5.20	1.28	141	.....TEMPLE.....	1.26	7.25
5.40	1.48	150	.....HASTINGS.....	1.06	7.05
† 5.50	2.00	157	AR.....WAURIKA.....LV	12.55	† 6.45
pm	pm			am	am

REFERENCE NOTES

* Daily. † Except Sunday. § Sunday only.
f Stops for meals.
a Stops to receive passengers for Poyen and points south.
b Stops to discharge passengers from points east of Walters or to pick up for points west.
c Stops at any station to take on or let off passengers from points south of Haskell.
d Will stop on signal at McIntosh (M. P. 39.7), Old Gravel Pit (M. P. 70.2), Ritchie's Spur (M. P. 92.2) and at Quinn (M. P. 94.3).
e Stops at Goodman (M. P. 16) to receive passengers for points beyond Opitz.
f Stop on signal.
g Stops to let off passengers from north of Butterfield.
h Nos. 631, 632, 633 and 634 stop on flag at Milams (M. P. 185) and at Herma; Nos. 631, 632 and 635 stop on signal at Saline River, near Benton, Ark., to receive and discharge passengers.
k Stops on signal at Goodman (M. P. 16).
m Stops to discharge passengers from points west or to pick up for points east of Walters.
n No Agent.
o Nos. 651-652 stop on flag at Cottonwood (M.P. 41.1).
p Nos. 637-638 stop on signal at Nobrac (M. P. 269.0).
r Nos. 635-636 stop on signal at Isabel (M. P. 68.3).
t Stop on flag to take on passengers for points south of Haskell on Louisiana Line.

NOTE 1—All trains will stop at any station to let off passengers ticketed through by foreign lines.
NOTE 2—Via Warren and Ouachita Valley Ry.

Table 53 Shawnee and Asher

656 Mixed	Miles	STATIONS	656 Mixed
pm			am
12.40	0	LV..SHAWNEE 80..AR	† 9.05
.....	5	.....SPUDLAND.....n	.....
1.30	8	.....TECUMSEH.....	8.25
.....	13	.....RUGGLES.....	.....
.....	16	.....CHRISNEY.....n	.....
2.15	18	.....ROMULUS.....	7.35
.....	21	.....PEARSON.....n	.....
.....	23	.....McGRAN.....n	.....
3.00	29	AR.....ASHER.....LV	† 7.05
pm			am

Table 54 Haileyville and Ardmore

44–651	Miles	STATIONS	652–43
pm			pm
•4.30	0	LV..McALESTER 80..AR	•†12.10
5.15	0	LV..HAILEYVILLE 60..AR	11.40
5.30	2	.....CRAIG.....n	f11.25
5.40	4	.....BOND.....n	f11.20
6.00	13	.....BLANCO.....	11.00
6.15	19	.....PITTSBURG.....	10.45
6.25	23	.....REYNOLDS.....n	f10.35
6.40	30	.....WARDVILLE.....	10.22
6.50	37	.....CAIRO.....n	f10.05
7.00	43	.....N. COALGATE.....	9.50
7.30	53	.....OLNEY.....	9.26
f 7.45	58	.....HARDWOOD.....n	f 9.22
8.10	61	.....WAPANUCKA.....	9.10
8.50	70	.....FILLMORE.....	8.50
9.15	75	.....MILBURN.....	8.40
10.00	83	.....TISHOMINGO.....	8.20
10.28	89	.....RANDOLPH.....	8.05
10.48	92	.....RUSSETT.....	8.00
11.16	97	.....MANNSVILLE.....	f 7.48
11.45	104	.....FRISCO JCT.....n	7.35
11.50	105	.....DURWOOD.....	7.30
12.05	110	.....PROVENCE.....	f 7.16
12.40	116	AR.....ARDMORE.....LV	7.00
pm			am

Table 55 Chickasha and Lindsay

790 Mixed	714 Mixed	Miles	STATIONS	713 Mixed	789 Mixed
pm	am			pm	pm
† 2.50	•10.00	0	LV.CHICKASHA 64-44..AR	• 2.00	† 5.55
f 3.10	f10.20	6	.....LUCILE.....n	f 1.40	f 5.37
f 3.22	f10.35	11	.....LYLE.....n	1.25	5.23
3.30	10.55	14	.....ALEX.....	1.10	5.16
3.50	11.20	19	.....BRADLEY.....	12.50	5.00
4.10	11.40	26	AR.....LINDSAY.....LV	12.30	4.40
pm	am			pm	pm

Table 56 Little Rock-Crossett Little Rock-Alexandria-Eunice

635 Daily	631–639 Daily	Miles	(SEE NOTE 1) STATIONS	632 Daily	640–654 Daily
pm	am			pm	am
July 4.20	8.00	0	LV..LITTLE ROCK..AR	7.15	11.59
f.....	f.....	8	.....BERGER.....n	.....	f11.38
f.....	f.....	11	.....GUILFORD.....	.....	f11.30
f.....	f.....	15	.....VIMY RIDGE.....	.....	11.22
f.....	f.....	18	.....BROOKS.....n	.....	f11.15
f 5.05	a 8.52	22	.....BAUXITE.....	f 6.23	11.00
5.15	8.52	26	.....BENTON 51.....	6.20	10.50
5.30	9.05	32	.....HASKELL 81.....	6.05	10.45
f 5.44	f 9.15	36	.....NYDIA.....n	f 5.54	f10.28
f 5.50	f 9.19	41	.....FENTER.....	f 5.48	f10.20
6.00	9.26	44	.....POYEN.....	5.40	10.12
f 6.06	f 9.30	50	.....THIEL.....n	f 5.34	f10.02
6.20	9.52	55	.....LEOLA.....	5.12	9.52
6.30	10.07	62	.....CARTHAGE.....	5.00	9.40
f 6.33	f10.19	66	.....BUNN.....n	f 4.56	f 9.27
f 6.39	f10.35	76	.....IVAN.....	f 4.50	f 9.14
7.00	10.55	82	.....FORDYCE.....	4.30	8.59
f 7.10	f11.07	87	.....LINDALE.....	f 4.20	f 8.41
f 7.20	11.12	90	.....ELLISVILLE.....	f 4.15	f 8.36
7.50	11.25	96	AR..TINSMAN..LV	4.00	8.23
8.00	11.35	0	LV..TINSMAN..AR	3.50	8.10
8.35	11.55	7	AR....BANKS....LV	3.05	7.45
.....	1.10	23	AR WARREN (NOTE 2) LV	.....	6.40
.....	f12.05	12	.....CRANEY.....n	.....	f 7.35
.....	12.17	16	.....HERMITAGE.....	.....	7.22
.....	12.28	23	.....INGALLS.....	.....	7.12
.....	12.44	28	.....VICK.....	.....	7.02
.....	f12.56	29	.....BROAD.....n	.....	f 6.51
.....	f12.59	33	.....EMORY.....n	.....	f 6.50
.....	.....	39	.....WHITLOW JCT..n	.....	f 6.35
.....	1.30	44	AR..CROSSETT..LV	.....	6.20
7.50	11.25	95	Lv..TINSMAN..AR	3.45	8.23
8.15	11.53	104	.....HARRELL.....	3.18	8.00
f 8.25	f12.11	113	.....ARTESIAN.....n	f 3.04	f 7.48
8.40	12.20	120	.....CALION.....	2.45	7.28
9.00	1.00	131	AR..EL DORADO..LV	2.25	7.00

633 Daily	Miles		634 Daily
pm			am
A 5.50	131	LV..EL DORADO..AR	A 10.55
6.01	135	.....CARGILE.....n	10.35
f 6.06	138	.....SMITH.....n	f10.30
6.15	140	.....UPLAND.....	10.22
f 6.23	143	.....CORNIE, ARK..n	f10.15
6.30	147	JUNCTION CITY, ARK., LA.	10.05
6.40	150	.....RANDOLPH, LA.....	9.58
6.49	154	.....LILLIE.....	9.50
f 6.56	158	.....COPLEY.....n	f 9.40
7.06	163	.....BERNICE.....	9.30
f 7.18	168	.....MIDDLEFORK.....n	f 9.18
7.33	172	.....DUBACH.....	9.05
7.46	176	.....HILLY.....	8.51
f 7.56	181	.....VIENNA.....	f 8.43
f.....	186	.....CHAUTAUQUA.....n	f.....
8.37	186	.....RUSTON.....	8.35
8.50	193	.....ELMORE.....	7.58
9.03	196	.....ANSLEY.....	7.50
9.10	199	.....QUITMAN.....	7.40
9.23	205	.....HODGE.....	7.26
9.30	207	.....JONESBORO.....	7.20
9.45	213	.....WYATT.....	7.05
10.00	219	.....DODSON.....	6.50
f10.15	225	.....TANNEHILL.....n	f 6.39
10.40	230	AR..WINNFIELD..LV	6.25
9.00	230	LV..WINNFIELD..AR	6.25

637 Daily			638 Daily
am			am
p11.15	240	.....PACKTON.....	p 9.00
f11.30	275	.....PINEVILLE JCT.n	f 8.42
f11.38	282	.....WILLOW GLEN..n	f 8.33
f11.41	286	.....MORELAND.....n	f 8.30
11.51	287	.....CHAMBERS.....n	8.20
11.59	291	.....LAMOURIE.....	8.12
f12.11	293	.....LE COMPTE.....	f 8.00
12.30	297	.....SARTORI.....n	7.40
12.40	305	.....MERIDIAN.....	7.30
12.56	308	.....TURKEY CREEK..	7.15
f 1.01	315	.....PINE PRAIRIE..	f 7.10
1.16	317	.....EASTON.....n	6.56
1.23	321	.....REDDELL.....n	6.50
f 1.31	325	.....MAMOU.....	f 6.40
1.45	329	.....FENRIS.....n	6.30
pm	334	AR..EUNICE..LV	am

Additional trains leave El Dorado, daily, for Cornie at 6.30 a. m., 8.45 a. m., 12.50 p. m. and 4.00 p. m.

Additional trains leave Cornie daily, for El Dorado at 7.40 a. m., 9.45 a. m., 1.40 p. m. and 7 p. m.

A. M. time shown in LIGHT face type, P. M. time shown in DARK face type.

H. L. REED, having been first duly sworn, testified as a witness on behalf of the defendant as follows:

Direct examination.

By Mr. Bleakmore (attorney for defendant):

Q. You may state your name, age, residence and occupation?
A. H. L. Reed; general superintendent Chicago, Rock Island & Pacific Railway; Residence, in El Reno, Oklahoma; Age, 50.
Q. Mr. Reed, I will ask you if in the latter part of the year 1919 and the early part of the year 1920, you occupied the same position under the United States Railroad Administration you occupy at this time—that is, general superintendent of the railroads of the Chicago, Rock Island & Pacific Railway Company?
[fol. 102] A. Yes, sir.
Q. At that time you were an officer of the Railroad Administration?
A. Yes, sir.
Q. Mr. Reed, I will ask you if in the years 1919 and 1920, or at any other time, the El Paso & Southwestern Railway Company was any part of the Chicago, Rock Island & Pacific Railway Company or had any connection with that railroad?

Mr. Suits: Objected to, as incompetent, irrelevant and immaterial.
The Court: Overruled.

A. No, Sir.
Q. It is an independent railroad altogether?

Mr. Suits: Objected to, as suggestive and leading.
The Court: Overruled.

A. Yes, sir; it is an independent railroad organization.
Q. I will ask you, Mr. Reed, whether or not the Chicago, Rock Island & Pacific Railway Company owns or operates, or ever owned or operated, a railroad in the State of Texas?
A. I think you have taken in too much territory. I can't answer that question.

Mr. Bleakmore: I withdraw that question.

Q. I will ask you if in the years 1919 and 1920, or since that time, the Chicago, Rock Island & Pacific Railway Company owned or operated a railroad in the State of Texas?
A. I don't know anything about the ownership. They never operated one.
[fol. 103] Q. I will ask you where the line of railroad of the Chicago, Rock Island & Pacific ends on the line between Oklahoma City and Amarillo?
A. It ends at the Oklahoma-Texas line, near Texola.
Q. At Texola?
A. Near Texola, but I don't know the exact location.
Q. I will ask you where the line of railroad of the Chicago, Rock

Island & Pacific Railway Company running out of Tucumcari east towards Amarillo ends.

A. At the New Mexico-Texas line, near Glen Reo.

Q. I will ask you, Mr. Reed, if in the year 1919 and the early part of the year 1920, and at the time the railroads were in the hands of the government of the United States under administrative control, if the officers operating the Chicago, Rock Island & Pacific Railway Company railroad under the Railway Administration, operated any part of the railroad of the Chicago, Rock Island & Gulf in the State of Texas?

A. You mean during the Federal Administration?

Q. Yes.

A. I would have to look up my records to find out about that.

Q. What time, Mr. Reed, did you become—at what time did you take your office at El Reno as a general officer of the railroad?

A. In December the 1st, 1917.

Q. And you occupied the office all during administrative control of that road, did you not?

A. Yes, sir; except that there was a change in titles. I was assistant general manager when I was first appointed on December 1st, 1917, and it was later changed, without changing duties, to the title of General Superintendent. Same duties, but they changed the title.

[fol. 104] Q. Now, Mr. Reed, I will ask you if the employees running on trains between the division points on each the Chicago, Rock Island & Pacific Railway Company's railroad and on the railroad of the Chicago, Rock Island & Gulf, while working on the railroad up to the line of the State of Texas are the employees of the Pacific and when they reach that line and go into the State of Texas if they are the employees of the Gulf?

A. Well, they make two——

Mr. Suits: Objected to, as a conclusion of the witness.

The Court: Overruled, if he knows.

A. They make two sets of reports, one for the Chicago, Rock Island & Pacific and one for the Chicago, Rock Island & Gulf, drawing their pay for their services for each company. The Gulf checks come from Fort Worth and the Rock Island proper checks come from Chicago, paid by two different officers.

Q. And while on the railroad of the Chicago, Rock Island & Pacific Railway Company they are the employees of the Pacific Company and while on the track and road of the Gulf they are the employees of the Gulf and——

A. That is true, sir.

Q. —and paid by each road for their respective service?

A. That is true.

Q. As I understand you, The Chicago, Rock Island & Pacific Railway Company operates no trains, and operated no train is 1919 and 1920, over the Gulf Railroad; is that correct?

A. That is correct.

Mr. Bleakmore: That is all.

[fol. 105] Cross-examination.

By Mr. Suits (attorney for plaintiffs):

Q. You are General Superintendent of the Chicago, Rock Island & Pacific Railway Company, located at El Reno?

A. Yes, sir.

Q. What property or territory does your jurisdiction cover?

A. I have all of the lines—Rock Island Lines—in New Mexico, Tennessee, Louisiana, Arkansas, Oklahoma, a part of the line in Missouri and Kansas.

Q. A train starting from Tucumcari, New Mexico, for Oklahoma City comes over the main line of the Rock Island in the panhandle of Texas, does it not?

A. Yes, sir.

Q. Without any break or any disturbance in the crews or the make-up of the trains?

A. Change cars at Amarillo, is all.

Q. That is in the middle of the panhandle?

A. Yes, sir.

Q. There is no change made of any kind, at either of the state lines,—New Mexico line or Oklahoma line?

A. There is none.

Q. Do you know why that road is called the Chicago, Rock Island & Gulf out there?

A. No, sir.

Q. Do you know why that part of the Rock Island line is designated by that name, under a corporation different from the Chicago, Rock Island & Pacific?

A. No, sir.

Q. Now, Mr. Reed, you speak about two different reports of the employees. Do those reports come into your office?

[fol. 106] A. No, sir.

Q. Are they made or requested or required under your jurisdiction as general superintendent?

A. No, sir; we don't get any of them. Chicago and Gulf reports made by conductors and agents go to Forth Worth, on the C., R. I. & G., and on the other line go to Chicago.

Q. Then they are not made under your direction, are they?

A. No, sir.

Q. You never see them, and they don't come to your office?

A. They don't come to my office.

Q. They are not made at your request?

A. No, sir.

Mr. Suits: Move to strike the statement that employees make two sets of reports.

The Court: Overruled. I don't see why he can't testify to that, like ht can any other fact.

Q. Now, Mr. Reed, you don't know anything about this particular shipment of cattle involved in this lawsuit?

A. No, sir; I have no personal knowledge of it.

Q. You say, during Federal control, you would have to examine your records before you could state whether you had charge of the C., R. I. & G. in Texas?

A. It is my recollection that we had no charge of that line at all during Federal control or had nothing to do with it. During Federal control we had at one time two regional directors. The Rock Island was cut in two at Chickasha and it was for several months at the beginning, and later on it was consolidated and some other changes made which I would hesitate to testify to just now, just what they did tell us to do at that time, and for that reason I didn't [fol. 107] care to make a statement about something I didn't know much about without consulting the records.

Q. You wouldn't want to say positively you didn't have charge of that line that went through the panhandle?

A. If I had charge of that line I didn't exercise any jurisdiction over it.

Q. How are the trains dispatched between El Reno and Tucumcari, New Mexico?

A. All of the trains in Texas on the line you mention are handled from Amarillo, including some in Oklahoma as far as Sayre to the West. The dispatcher at Amarillo, Texas, handles trains to Tucumcari.

Q. When a shipment is ordered at Tucumcari, New Mexico, where does the agent get his authority or where does he make his request, on what chief dispatcher?

A. At Amarillo.

Q. Not at El Reno?

A. Oh, no. We have nothing to do with that.

Q. Now, passenger trains run right through without any stops and tickets are sold from Oklahoma City to Amarillo and from Oklahoma City to Tucumcari, right along?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. Yes sir, trains run through.

Q. And tickets are sold through to those stations?

A. Same as they are to California over the Southern Pacific, yes sir.

[fol 108] Q. And that part of the line in Texas out there is a part of the Rock Island System?

A. C. R. I. & G.?

Q. Yes.

A. It is so shown on the advertisements, sir.

Q. (Handing paper to witness.) This is the official time-table gotten out by the Rock Island System, is it not Mr. Reed?

Mr. Bleakmore: That time table is in 1922.

Q. That whole time table is your official time table, is it not Mr. Reed?

Mr. Bleakmore: Objected to, as incompetent, irrelevant, and immaterial; it speaks for itself.

Mr. Suits: I am going to prove that the stations were just the same.

Mr. Bleakmore: Note an exception to that.

Q. Does the Rock Island Company get out this time table?

A. It is issued by the Rock Island.

Q. Now, look at time table Number 50, which has been identified as Plaintiffs' Exhibit "K," and state if that shows a list of stations between Memphis, Tennessee, and Tucumcari, New Mexico?

A. It does.

Q. And those stations are the same now as they were in 1919?

A. I imagine they are. They look to be. There might be some added, but I don't think so.

Q. (Handing paper to witness.) What is this instrument, Mr. Reed?

A. That is Official Guide of Railroads of the United States.

[fol. 109] Q. That is recognized by all railroads as being correct, is it not?

A. Yes, sir. Information furnished by the railroads.

Q. Now, on page 803 of this Official Guide I notice it starts off with the Rock Island Lines, and giving a list of the officers of the Chicago, Rock Island & Pacific Railway Company. Mr. Gorman is President of the Chicago, Rock Island & Pacific Railway Company?

A. Yes, sir.

Q. Mr. Gorman is also President of the Chicago, Rock Island & Gulf Railway Company, is he not?

A. Yes, sir.

Q. Mr. Warner is manager of the second district of the Chicago, Rock Island & Pacific Railway Company also, at El Reno?

A. Yes, sir.

Q. Will you tell the court and jury what the second district of the Chicago, Rock Island & Pacific Railway Company comprises?

A. Second district comprises all of the lines in Texas, Tennessee, Louisiana, Arkansas, Oklahoma, New Mexico, and part of the lines in Kansas and Missouri.

Q. Mr. Warner, as you just stated, is manager of the second district, and is located at El Reno?

A. Yes, sir.

Q. Now, Mr. Warner is the——

A. Vice-President.

Q. He is vice-president of the Chicago, Rock Island & Gulf Railway too?

A. Yes, isr.

[fol. 110] Q. And his headquarters is also at El Reno for that Company?

A. Yes, sir.

Q. Now, you just testified that Mr. Warner's jurisdiction as General Manager of District Number 2 takes in the lines in Texas?

A. Yes, sir. I might add I think his title is shown as Vice-Presi-

dent and General Manager. However, I don't know as that makes any difference. Not in the official guide.

Q. Among the lines in Texas which are a portion of *of* his jurisdiction in the second district, are the Chicago, Rock Island & Gulf lines?

A. Yes, sir; that is true, but all officers who are officers of the second district are not officers of the C. R. I. & G.

Q. I know, not all of them, but his position as manager of the second district includes the line in Texas?

A. He has a higher rank on the C. R. I. & G. than he does on the Rock Island.

Q. He is Vice-President of that?

A. Yes, sir.

Q. And Mr. Gorman is President of both Companies?

A. Yes, sir.

Mr. Suits: That's all.

Redirect examination.

By Mr. Bleakmore (attorney for defendant):

Q. All the officers of the C. R. I. & G. and Pacific Railway Companies are not the same, are they Mr. Reed?

A. No, sir.

[fol. 111] Q. They are separate, independent corporations, are they not, having their own officers; each has its own officers?

A. Yes sir, up to a certain point. As the gentleman named, some of the officers hold offices on both railroads.

Q. Neither railroad, however, has any more control over the officers of the other and operation of the other road than it would over the A. T. & S. F. or any other road like that, would it?

Mr. Suits: Objected to, as calling for a conclusion.

The Court: Overruled.

A. So far as I am able to observe, in my particular capacity, I have no control over any officers on the C. R. I. & G.

Mr. Hall: That is not responsive, and ask it be stricken.

The Court: Overruled.

Mr. Hall: Exception.

Q. You have never exercised any superintending control over the operation of the Chicago, Rock Island & Gulf railroad?

A. I have no jurisdiction over the C. R. I. & G., no sir.

Mr. Bleakmore: That is all.

Recross-examination.

By Mr. Suits (attorney for defendant):

Q. Do you know Mr. Bell?

A. I know who he is.

Q. He is Vice-president and General Counsel of the Chicago, Rock Island & Pacific Railway Company, is he not?
[fol. 112] A. In New York, yes sir.
Q. He is also Vice-President of the Chicago, Rock Island & Gulf Railway Company?
A. If that shows he is, he is.
Q. The general officers—that is, directing officers—are the same in both Companies?
A. If you will speak of the executive officers, I will agree with you, although there are executive officers located at Fort Worth. There is a vice-president there,—Mr. Lasater.

Redirect examination.

By Mr. Bleakmore (attorney for defendant):

Q. Mr. Reed, during the administrative control of the railroads, Mr. Warner was an officer of the Railroad Administration, was he not, as you were?
A. Well, that was our understanding, and that is my recollection at this time. That is my recollection at this time.

Mr. Bleakmore: That is all, Mr. Reed.

(Witness excused.)

[fol. 113] R. F. O'Day, having been first duly sworn, testified, as a witness on behalf of the defendant, as follows:

Direct examination.

By Mr. Bleakmore (attorney for defendant):

Q. You may state your name, residence and occupation?
A. R. F. O'Day; Age, 29; Residence, Oklahoma City.
Q. What is your business now?
A. I am rate clerk in the traffic department, Oklahoma City.
Q. Mr. O'Day, I hand you certified tariff, certified by the Secretary of the Inter-State Commerce Commission, and ask you to tell the court and jury the tariff on cattle in carload lots between Campana, New Mexico, and Oklahoma City?

Mr. Suits: Objected to, as incompetent, irrelevant and immaterial; not within the issues framed by the pleadings.
The Court: Overruled.
Mr. Suits: Exception.

A. Southwestern Lines Tariff 76-C, freight on livestock between points in Texas and Missouri and New Mexico and Oklahoma and various other points, carried on a mileage basis: E. P. &. S. W. distance tariff 835-A, I. C. C. No. 839, carries a distance of 34 miles from Campana, New Mexico, to Tucumcari, New Mexico,

Rock Island distance tariff 1120-B, carries distance between the Rock Island & Gulf to the Texas line and from the Texas line to Oklahoma City, which is from Tucumcari to Texola, which is the line between [fol. 114] Oklahoma and Texas, as 225.5 miles; from Texola, Oklahoma, to Oklahoma City, carries a mileage of 163.2, making a total from Campana, New Mexico, to Oklahoma City, 422.7 miles. Under this basis of the tariff, a rate of 38 cents is carried, on page 32, on two or more lines plying between points in New Mexico and Oklahoma.

Q. I wish you would look over these expense bills introduced in evidence on the part of the plaintiffs, cars of cattle transported from Campana, New Mexico, to Oklahoma City, and tell the court and jury whether they were transported at the regular tariff rate as prescribed in the tariffs to which you have referred, excluding the cost of any feed or anything of that kind; just the transportation charges as provided in the tariff?

A. They carry the regular rate of 38 cents, with the minimum weight 22,000, carried as per stated in the tariff.

Mr. Bleakmore: We offer in evidence the tariffs referred to in the testimony of this witness under the certificate and seal of the Interstate Commerce Commission.

Mr. Suits: Object to that, because there is nothing in the certificate or on the face of the tariff showing that that was the rate in effect at the time the cattle in question moved.

The Court: Overruled.

Mr. Bleakmore: That's all.

(Witness excused.)

A true copy of the aforesaid tariffs, so offered and received in evidence, was and is as follows:

[fol. 115] Here insert tariffs identified by last witness.

(Tariffs inserted in Orginial Casemade. 12/27/1923. None appears as above. R. H., Jr.)

[fol. 116] JOHN GUINN, having been first duly sworn, testified, as a witness on behalf of the defendant, as follows:

Direct examination.

By Mr. Bleakmore (attorney for defendant):

Q. State your name, age and business.

A. John Guinn; Age, 31; Assistant Agent of the Rock Island at Oklahoma City.

Q. I will ask you if in the usual and ordinary course of business there is required to be kept, and is kept, a record of cars arriving at Oklahoma City on the Rock Island railroad from the west and delivered to the M. K. & T. Railway Company for transportation to the stock yards at Oklahoma City?

COPY BOUND CL

A. There is.
Q. Was such a record kept in the month of January, 1920?
A. Yes sir, there was.
Q. Have you the custody and control of that record?
A. Yes, sir.
Q. (Handing papers to witness.) I will ask you to state, Mr. Guinn, whether or not that record would show, and does show, the time of the delivery of cars to the M. K. & T. in the month of January, 1920?
A. Yes sir, it does.
Q. I will ask you to look upon your record and tell the jury whether or not it shows the delivery of the cars which are numbered [fol. 117] and initialed as follows: G. N., 55320; A. T. 58920; L. & N., 18271; C. & S., 1583; U. P., 37299; I. & G. N., 8038; L. & N., 19576; S. S. W., 8801; Rock Island, 76582?
A. All right. Yes, sir.
Q. Now, on what date were those cars delivered to the M. K. & T.?
A. On January 12th, 1920.
Q. And what time?
A. 8:15 a. m.
Q. Did any representative of the M. K. & T. sign you or give you a receipt for those cars, and if so what official or agent?
A. E. M. Turner, general yardmaster of the M. K. & T. or his agent.

Mr. Bleakmore: That is all.

(Witness excused.)

Thereupon, the defendant offered in evidence depositions of U. S. Devor, James D. Phipps, F. L. Dolton, W. L. Batson and F. D. Gibson, taken on the 27th. day of October, 1922, at Glenrio, Deaf Smith County, Texas, and filed in said cause on October 30th, 1922, and the same were read and proceedings had thereon, as follows, the notice thereof and the certificate thereto being also as follows:

[fol. 118] IN THE DISTRICT COURT OF OKLAHOMA COUNTY, OKLAHOMA

[Title omitted]

NOTICE TO TAKE DEPOSITIONS

The said plaintiffs, J. D. Alexander and Frank Griffith, and their attorneys of record, Messrs. Suits & Hall, will take notice that on the 27th day of October, 1922, the defendant above named, The Chicago, Rock Island & Pacific Railway Company, will take the depositions of sundry witnesses, to be used as evidence on behalf of the defendant in the trial of the above entitled cause, at the Passenger Station of The Chicago, Rock Island and Gulf Railway Company, in the City of Glenrio, County of Deaf Smith, State of Texas, between the hours of

CLOSE IN CENTER

8:00 o'clock A. M. and 6:00 o'clock P. M. of said day; that the taking of the same will be adjourned and continued from day to day at the same place and between the same hours until they are completed.

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant C., R. I. & P. Ry. Co.

We hereby acknowledge service of the above notice to take depositions, together with receipt of a copy thereof, this 16th day of October, 1922.

L. D. Alexander and Frank Griffith, Plaintiffs. Suits & Hall, Fred E. Suits, Attorneys for Plaintiffs.

[fol. 119] [Title omitted]

Depositions of witnesses taken to be used in an action pending in the District Court of Oklahoma County, State of Oklahoma, wherein L. D. Alexander and Frank Griffith are plaintiffs and James C. Davis, Agent United States Railroad Administration, in charge of Chicago, Rock Island & Pacific Railroad and Chicago, Rock Island & Gulf Railroad under Transportation Act, 1920, is defendant, in pursuance of the notice hereto attached and at the time and place therein stated.

The said L. D. Alexander and Frank Griffith, plaintiffs, appeared neither in person nor by their attorneys, and the said James C. Davis, Agent United States Railroad Administration, defendant, and Chicago, Rock Island & Pacific Railway Company defendant, appeared by his and its attorney, W. F. Collins.

Thereupon the said defendant produced the following witnesses, in order, of lawful age, who being first duly sworn, deposed and said:

[fol. 120] DIRECT EXAMINATION OF WITNESS U. S. DEVOR BY MR. COLLINS

(Read by Mr. Collins.)

Q. State your name?

A. U. S. Devor.

Q. What is your business, Mr. Devor?

A. Agent of the C. R. I. & P. Ry. Co., at Tucumcari, N. M.

Q. Were you agent of the C. R. I. & P. Ry. Co. on January 6th and 7th, 1920?

A. I was.

Q. Were you agent of the E. P. & S. W. Ry. System at Tucumcari, N. M. at the time mentioned?

A. I was.

Q. Do you have with you a record of a shipment of cattle loaded in nine cars moving from Campana, N. M. to Oklahoma City, Okla. on January 6th, 1920?

A. I have.

Q. Give the car numbers and initials containing the shipment?

A. Rock Island 76582, S. S. W. 8801, L. & N. 19576, I. & G. N. 8038, U. P. 37299, C. & S. 1583, L. & N. 18271, G. N. 55320, A. T. & S. F. 58930.

Q. Was there any one traveling with the shipment as a caretaker, and if so what was the name?

A. Grover B. Hill was in Tucumcari and claimed to be in charge of the shipment after its arrival.

Q. At what time did the shipment arrive over the E. P. & S. W. at Tucumcari?

A. At 6:20 P. M. January 6th, 1920.

[fol. 121] Q. After the arrival of this shipment at Tucumcari, was there any freight train scheduled to leave over the C. R. I. & P. Railroad in the direction of Amarillo?

A. No.

Q. After the receipt of the shipment at Tucumcari, at what time was the next C. R. I. & P. train scheduled to leave in the direction of Amarillo?

A. 6 or 7 o'clock A. M. on the 7th.

Q. Was there any train called for movement out of Tucumcari on the afternoon or evening of the 6th and later annulled?

A. Not to my knowledge.

Q. At what time did a freight train leave Tucumcari for Amarillo on the 6th of January, 1920?

A. There were two trains, one at 6:30 A. M. another at 9:15 A. M.

Q. What were the numbers of those trains?

A. First and second section of 92.

Q. Then, there was no freight train leaving Tucumcari in the direction of Amarillo from 9:15 A. M. of the 6th until the departure of Number 92 of the 7th?

A. No.

Q. Did a train leave Tucumcari over the El Paso division of the Rock Island between the 6 and 10 P. M. of the 6th?

A. I have not the records of the El Paso Division here.

Q. A train moving over the El Paso division would be headed toward Hutchinson, Kansas, and Kansas City, would it not?

A. Yes.

Q. What time did these cattle leave Tucumcari, and in what train?

A. In Number 92 at 8:05 A. M. January 7th.

Q. Were the cattle unloaded at Tucumcari?

A. No.

[fol. 122] Q. Why were they not unloaded?

A. Grover B. Hill gave me a written request not to unload them.

Q. Then that is the reason for not unloading them at that point, is it Mr. Devor?

A. It is.

Q. At what time was this order given?

A. 6:30 P. M. January 6th.

Q. Did you inform Mr. Hill at that time about when the cattle would move forward out of Tucumcari?

A. Yes sir.

Q. Mr. Hill then ordered you to leave the cattle in the cars and not unload them, did he?

A. He did.

Q. What was the condition of the weather at Tucumcari on the morning of January 7th?

Mr. Suits: That is objected to, as incompetent, irrelevant and immaterial, and not within the issues.

Mr. Bleakmore: The objection comes too late. This evidence was taken by way of deposition, with proper notice.

The Court: The objection will be sustained.

Mr. Bleakmore: Note an exception.

(Following is the answer, not read: "A. Records show that we reduced Number 92 to Eight Hundred Tons on the account of the storm, and the train was delayed account of switches frozen up, the temperature was 24 degrees above zero at 6:56 A. M. This gives a fair idea of the condition of the weather at this time.")

[fol. 123] Q. Now after No. 92 was made up ready for movement east did you receive a message directing that a number of cars be taken from the train on account of storm conditions?

Mr. Suits: Objected to by the plaintiffs, as incompetent, irrelevant and immaterial, and not within the issues.

The Court; Sustained.

Mr. Bleakmore: Defendant excepts.

(Following is the answer, not read: "A. Yes.")

Q. And did you reduce the ton-age as directed?

Mr. Suits: Objected to, for the same reasons.

The Court: Sustained.

Mr. Bleakmore: Exception.

(Following is the answer, not read: "A. Yes.")

Q. Then the delay in getting No. 92 out of Tucumcari on the morning of January 7th was due to an effort to get the train in such shape as would enable it to make fast time with the cattle, is that correct?

Mr. Suits: Objected to, as incompetent, irrelevant and immaterial.

The Court: Sustained.

Mr. Bleakmore: Exception.

Mr. Hall: For further objection to the last question there, we also object for the reason that it is leading and suggestive and calling for the conclusion of the witness.

The Court: I understand it. Objection sustained.

Mr. Bleakmore: Exception.

(Following is the answer, not read: "A. Yes.")

[fol. 124] Q. That is all.

U. S. Devor.

Subscribed and sworn to before me by said U. S. Devor this 27th day of October, A. D. 1922. J. G. Hastings, Notary Public, Deaf Smith County, Texas. (Seal.)

DIRECT EXAMINATION OF WITNESS JAMES D. PHIPPS BY MR. COLLINS

(Read by Mr. Collins.)

Q. State your name?
A. James D. Phipps.
Q. Where do you live, Mr. Phipps?
A. About three miles from Glen Rio.
Q. How long have you lived near Glen Rio?
A. Eight years.
Q Were you living near Glen Rio and at your present location on the 7th, 8th and 9th days of January 1920?
A. Yes.
[fol. 125] Do you have any recollection of the condition of the weather on the 7th day of January 1920?

Mr. Suits: Objected to by the plaintiffs, as incompetent, irrelevant and immaterial, and not within the issues.

The Court: Sustained.

Mr. Bleakmore: Exception.

Mr. Suits: There are 5 or 6 questions there following that, all asking about the same thing.

Mr. Bleakmore: In order to expedite the matter and save the record and not take up the time of the court, we offer in evidence all the testimony of the witness in regard to the weather conditions and the storm, and if Your Honor, with the consent of plaintiffs' counsel, will allow us an exception to each one of those—to each question and answer and order excluding it, it will save the record and also save time.

Mr. Suits: That wouldn't be true with reference to each of the questions in the deposition. There is some question in there that doesn't pertain to the weather.

Mr. Bleakmore: I stated with regard to the weather conditions and the storm.

Mr. Suits: I see. We will agree to that.

Mr. Bleakmore: If it meets the aproval of the court, let each question show the objection and objection is sustained and exception on the part of the defendant, and, if necessary to make up the record, that it should be separated in the transcript that way.

The Court: I think to the last question on page 7, it seems to go down to there, and let the record show that all questions before that are objected to, and exceptions allowed. I think that is correct. I just looked at them hurriedly.

Mr. Suits: We don't want to get our foot into it. Your Honor sustains the objection down to the last question on page 7 there are

a few questions, where the gentleman secured feed for the cattle and such as that, and we don't object to them.

The Court: All right. Go ahead. Read them all, then. Just read them all.

(Following is the answer, not read: "A. Yes".)

[fol. 126] Q. Did you have a snow and windstorm on that date?

Mr. Suits: Objected to, for the same reason.
The Court: Sustained.
Mr. Bleakmore: Exception.

(Following is the answer, not read: "A. Yes".)

Q. Was the storm very severe?

Mr. Suits: Object, for the same reason.
The Court: Sustained.
Mr. Bleakmore: Exception.

(Following is the answer, not read: "A. Yes.")

Q. Was there a great deal of wind in this storm?

Mr. Suits: Same objection as heretofore.
The Court: Sustained.
Mr. Bleakmore: Exception.

(Following is the answer, not read: "A. Yes.")

Q. Did you have a good deal of snow?

Mr. Suits: Same objection.
The Court: Sustained.
Mr. Bleakmore: Exception.

(Following is the answer, not read: "A. Yes.")

Q. Did you ever before see such violent wind and so much snow fall in the same period of time?

Mr. Suits: Same objection.
The Court: Sustained.
Mr Bleakmore: Exception.

(Following is the answer, not read: "A. No.")

[fol. 127] Q. Were you asked by any one on January 7th to provide feed for a lot of cattle which had been unloaded in the pens at Glen Rio?

A. Yes.
Q. Who asked you to provide this feed?
A. The agent, Mr. Dolton.
Q. Did you provide it on that date?
A. No.
Q. Why did you not provide it on that date?

Mr. Suits: That is objected to, as incompetent and irrelevant.
The Court: Sustained.
Mr. Bleakmore: Exception.

(Following is the answer, not read: "A. The weather was too severe.")

Q. You felt then you would endanger yourself by attempting to bring feed for the cattle?

Mr. Suits: Same objection.
The Court: Sustained.
Mr. Bleakmore: Exception.

(Following is the answer, not read: "Yes.")

Q. Did you furnish feed thereafter?
A. Yes.
Q. What kind and about how much?
A. It was bundle sorghum, and something like three hundred bundles.
[fol. 128] Q. Did you have any difficulty getting the feed to the cattle?

Mr. Suits: Same objection as heretofore.
The Court: Sustained.
Mr. Bleakmore: Exception.

(Following is the answer, not read: "A. Yes.")

Q. About how deep was the snow through which you came?

Mr. Suits: Same objection.
The Court: Sustained.
Mr. Bleakmore: Exception.

(Following is the answer, not read: "A. From six inches to four feet.")

Q. Was this representative of the conditions in this part of the country, so far as you know?

Mr. Suits: Same objection.
The Court: Sustained.
Mr. Bleakmore: Exception.

(Following is the answer, not read: "A. Yes.")

Q. Who paid you for this feed?
A. Mr. Dolton, the Rock Island agent.
Q. Did any one help you haul this feed into town?
A. Yes.
Q. Who was it?
A. Fred Deweese.
Q. Did a man by the name of Grover Hill help you haul any feed for these cattle?
A. No.

[fol. 129] Q. Did you haul any water for them?
A. No.
Q. If these had been your cattle would you rather they had been unloaded here in Glen Rio, where feed and water were available, or taken them on in the direction of Amarillo, and possibly snow bound between Glen Rio and that point?

Mr. Suits: Same objection as before.
The Court: Sustained.
Mr. Bleakmore: Exception.

(Following is the answer, not read: "A. Would have rather they would have been unloaded here.")

Q. You have had a good deal of experience with cattle, have you not Mr. Phipps?
A. Yes, sir.
Q. You were reared up and have lived on the farm handling cattle most of your life, have you not Mr. Phipps?
A. Yes, sir.
Q. How old are you, Mr. Phipps?
A. Sixty-nine.
Q. Then you make this answer in view of your experience as a cattle man or stock farmer?

Mr. Suits: Same objection as heretofore.
The Court: Sustained.
Mr. Bleakmore: Exception.

(Following is the answer, not read: "A. Yes.")

Q. A while ago you answered you brought in about three hundred bundles of feed. Did you have the bill before you?
[fol. 130] A. No.
Q. (Handing witness paper) I hand you a document bearing date of January 9th, 1920; how many bundles of feed are shown on this bill?

Mr. Suits: Object to that, as incompetent, irrelevant and immaterial.
The Court: Overruled.

A. Five hundred forty.
Q. What is the rate or price per bundle?
A. Eleven cents.
Q. And the total is Fifty Nine & 40/100 Dollars?
A. Yes.
Q. What is the other item in the bill?
A. Drayage.
Q. And what is the charge for this?
A. Twenty dollars.
Q. That is your signature, is it not?
A. Yes, sir.
Q. Did you help feed the cattle?
A. Yes.

Q. Did you notice whether or not there was plenty of water for the cattle in the troughs?

A. There was.

Q. Now, having helped feed these cattle and having seen they were provided with water, is it your opinion that they were given proper care while in the pens at this point?

A. Yes.

[fol. 131] Q. Are the stock pens located within the State of Texas at Glen Rio?

A. Yes.

Q. Where is the State line with reference to the depot?

A. About four feet.

Q. That is all.

James D. Phipps.

Subscribed and sworn to before me by said James D. Phipps this 27th day of October, A. D. 1922. J. G. Hastings, Notary Public, Deaf Smith County, Texas. (Seal.)

[fol. 132] DIRECT EXAMINATION OF WITNESS F. L. DOLTON BY MR. COLLINS

(Read by Mr. Collins.)

Q. State your name?

A. F. L. Dolton.

Mr. Suits: We object to all that portion of it relating to the storm, which is practically the entire deposition.

The Court: If that is the agreement, that the record be made as suggested, then the objection is sustained.

Mr. Bleakmore: Note an exception to each question to which the objection is sustained.

Mr. Collins: Shall I read these questions and answers which do not relate to the storm?

Mr. Bleakmore: No. Let the record show the objections and exceptions, and that will save the record and the time of the court and jury. Just consider it as read.

(The following, being the remainder of the deposition of the witness F. L. Dolton, was not read to the jury:)

Q. Where do you live, Mr. Dolton?

A. Glen Rio.

Q. What is your business or occupation?

A. Agent, Chicago, Rock Island and Gulf Railway Company.

Q. How long have you been agent?

A. Almost thirteen years on the Amarillo division.

Q. How long have you been agent at Glen Rio?

A. Seven years next April.

Q. Were you the first agent after Glen Rio as a station was opened?

A. Yes.

Q. Then you were agent at Glen Rio on the 7th, 8th and 9th days of January, 1920?

A. Yes.

Q. What was the condition of the weather at Glen Rio on January 7th, 1920?

A. When I came on duty 8 A. M. it was snowing hard, strong north wind, snow drifting badly, temperature 22 degrees above zero.

Q. Did it continue to snow and blow throughout the 7th and on the 8th?

A. Yes.

[fol. 133] Q. Was this a storm of unusual violence?

A. Yes.

Q. Did a freight train in which were nine cars of cattle arrive at Glen Rio in the morning of January 7th, and if so, give the number of this train, the name of the conductor and the time of arrival.

A. Yes. No. 92, Conductor Gordon, arrived 10:55 A. M.

Q. Did this train proceed east toward Amarillo?

A. No.

Q. Was the train tied up at Glen Rio?

A. Yes.

Q. Why was this train tied up at Glen Rio?

A. On account of cuts filling with snow and violence of wind and snow.

Q. At what time did this train tie up?

A. One P. M.

Q. Can you explain why this train was not tied up upon its arrival at Glen Rio?

A. It was held here on the orders of the Dispatcher waiting reports on the storm's violence east of here.

Q. Did any other train arrive from the west during the 7th?

A. Yes.

Q. What train was that?

A. No. 44 passenger.

Q. Does that train carry the U. S. mail?

A. Yes.

Q. Did this train leave Glen Rio, or if not what became of it?

A. No, tied up here.

Q. At what time did it arrive?

A. It arrived at 11:07 A. M.

Q. At what time was this train tied up?

A. 1:30 P. M.

Q. Why did you not tie this train up earlier?

A. Waiting the orders from the dispatcher.

Q. Did any other train arrive at Glen Rio on this date from the west?

A. No.

Q. Did any train arrive at Glen Rio from Tucumcari on the 8th?

A. No.

Q. Did any train arrive at Glen Rio from Tucumcari on the 9th?
A. Not up until 5:30 P. M.
Q. Did a train arrive at Glen Rio from Amarillo going west on the 7th?
A. No.
Q. Did you have any trains coming from Amarillo and headed west on the 8th?
A. No.
Q. At what time did the first train from Amarillo arrive at Glen Rio on the 9th?
A. At 2:20 P. M.
Q. What kind of a train was this?
A. Snow plow.
[fol. 134] Q. What time did the passenger train which had been tied up at Glen Rio on the 7th leave for Amarillo on the 9th?
A. 2:24 P. M.
Q. Now, going back to the time of arrival of this freight train on January 7th, can you give the initials and numbers of cars containing cattle and moving into Glen Rio on that train?
A. Yes.
Q. What were the car numbers and initials?
A. Rock Island 76582; S. S. W. 8801; L. & N. 19598; I. & G. N. 8038; U. P. 37299; C. & S. 1583; L. & N. 18271; A. T. 58930; A. T. 58320.
Q. What was done with the cattle in these cars after their arrival at Glen Rio?
A. Unloaded in stock-pens.
Q. Was any one in charge of the cattle, and if so can you give his name?
A. There was some one in charge, name of Grover B. Hill.
Q. After these cattle were unloaded and placed in the pens were they fed?
A. Not on the 7th.
Q. You say they were unloaded on the 7th?
A. Yes.
Q. Why were they not fed on that day?
A. Account of the severity of the storm, could not get feed.
Q. Did you try to buy feed for these animals on the 7th?
A. Yes.
Q. Whom did you talk with in an effort to get feed?
A. J. W. Johnson, J. D. Phipps, Brooks Love, Clara Bowe.
Q. Did you go to see these men, or did you call them on the phone?
A. Called on phone.
Q. Are these the only people you called upon?
A. No.
Q. Who else did you call?
A. The store at this place and store at Endee, N. M.
Q. Are these the only individuals who have telephones and are these the only stores within a radius of twenty miles?
A. These are the only farmers who had phones and who had

feed for sale and these are the only stores within a radius of fifteen miles.

Q. Why were you unsuccessful in your efforts to get feed on the 7th?

A. On the account of the severity of the storm, no one would come out.

Q. Did the store at Glen Rio or the one at Endee have any feed for sale?

A. No.

Q. Did you get any one to promise on the 7th that feed would be brought in as quickly as weather conditions would permit?

A. Yes.

Q. Did you succeed in getting feed for the cattle on the 8th?

A. Yes.

[fol. 135] Q. From whom did you purchase feed on the 8th?

A. J. D. Phipps.

Q. Was he located nearer to Glen Rio than either of the others having feed for sale?

A. Yes.

Q. Were the cattle fed on the 9th?

A. Yes.

Q. How many bundles of feed did you buy from Mr. Phipps?

A. Five hundred forty bundles.

Q. Did you distribute this over the pens?

A. Yes.

Q. Did Mr. Phipps help you distribute the feed over the pens?

A. Yes.

Q. Were the cattle watered on the 7th?

A. Yes.

Q. Were they supplied with water on the 8th and 9th?

A. Yes.

Q. Were the water troughs kept full all the time the cattle were in the pens?

A. Yes.

Q. What did you pay Mr. Phipps for the feed purchased from him?

A. $79.40.

Q. Was any complaint made to you by Mr. Grover Hill about the treatment these cattle received while in your pens?

A. No.

Q. Did Mr. Hill go out and buy any feed during the time the cattle were in the pens at Glen Rio?

A. No.

Q. Now, if Mr. Hill had gone out and bought feed for these cattle and fed it to them would you have known it?

A. Yes.

Q. Did Mr. Hill haul any water or have any hauled to these cattle while in the pens at Glen Rio?

A. No.

Q. If Mr. Hill had brought water then would you have known it?

A. Yes.

Q. Now, Mr. Dolton, did you have a talk with Mr. Hill about the feed for these cattle, and did you ask him if he felt they had been supplied with all they could consume?

A. Yes.

Q. What was his answer to this query?

A. That they had all they could eat.

Q. How long were you engaged in loading these cattle out on the 9th?

A. About two hours.

Q. What is the distance from Glen Rio to the first telegraph station to the east?

A. Twenty four miles.

Q. Was the crew for this train which had been tied up at Glen Rio on the 7th called as quickly as the snow plow train came in sight?

A. Yes.

Q. Did you and your help begin loading these cattle back into the cars immediately after the departure of the passenger and snow plow trains?

A. Yes.

[fol. 136] Q. What time did No. 43 a passenger train from Amarillo, arrive at Glen Rio on the 9th?

A. 4:35 P. M.

Q. Had the cattle all been loaded into the cars at that time?

A. Yes.

Q. Now, Mr. Dolton, taking into consideration the nature of the country between Glen Rio and Vega and the severity of the storm on the 7th, would you have considered it practicable to operate this train any further east?

A. No.

Q. Is Glen Rio located on low ground or is it located on what is commonly known as the plains country?

A. Low broken country around Glen Rio.

Q. Now do you know of your own knowledge that the weather generally is far more severe on the plains than down in the low country in which Glen Rio is situated?

A. Yes.

Q. Now, taking into consideration all of the conditions prevailing at the time, do you believe these cattle could have been given better attention than they were?

A. No.

Q. That is all.

F. L. Dolton.

Subscribed and sworn to before me by said F. L. Dolton this 27th day of October, A. D. 1922. J. G. Hastings, Notary Public, Deaf Smith County, Texas. (Seal.)

Mr. Bleakmore: Defendant offers in evidence the deposition of W. L. Batson, and plaintiffs object to the deposition as a whole.

Mr. Hall: Plaintiffs object to the deposition insofar as the questions relate to the storm.

Mr. Bleakmore: Objection sustained, and defendant excepts.

Mr. Suits: And the same is true of Mr. Gibson's deposition.

Mr. Bleakmore: We offer the deposition of F. D. Gibson, and want the same record as to him.

The Court: All right.

[fol. 137] Following are the depositions of said W. L. Batson and said F. D. Gibson, not read to the jury:

DIRECT EXAMINATION OF WITNESS W. L. BATSON BY MR. COLLINS

Q. State your name?

A. W. L. Batson.

Q. Where do you live Mr. Batson?

A. Endee, N. M.

Q. How long have you lived at Endee, N. M.?

A. Eighteen years.

Q. What is your business?

A. Cattle business and mercantile business.

Q. How long have you been engaged in the cattle business?

A. About twenty-eight years.

Q. Where were you, Mr. Batson, on the 7th of January, 1920?

A. I was at Endee, N. M.

Q. What was the condition of the weather on that date, if you remember?

A. It was stormy.

Q. Was that storm accompanied by much wind, Mr. Batson?

A. To the best of my knowledge, it was.

Q. Was the storm usual or was it unusual in its violence?

A. It was unusual.

Q. Mr. Batson, if you had owned a lot of nine car loads of cattle and they had been in a train on that day, would you rather they had been unloaded at Glen Rio where they could be fed and watered than carried on and run the hazard of becoming snow bound?

A. I would have preferred to have had them unloaded and fed than to take the chances of having them snow bound away from water and feed.

Q. Are you acquainted with the weather conditions generally prevailing between here and Cap Rock, and are you acquainted with the weather conditions generally upon the plains or the country extending east of Cap Rock?

A. I am.

Q. Where is the climate most severe, in the country around Glen Rio or after leaving Glen Rio and in the plains country?

A. It is more severe upon the Cap Rock east than it is from the Cap Rock west.

Q. You have had experience in handling cattle both on the plains and in the country around about Glen Rio, I believe, and if you have will you say where your losses from cold were greater, on the plains or in the country around Glen Rio? I confine this ques-

tion to your experiences of one and the same winter where you had cattle both on the plains and around Glen Rio.

[fol. 138] A. Much greater on the plains.

Q. That's all.

W. L. Batson.

Subscribed and sworn to before me by the said W. L. Batson this 27th day of October, A. D. 1922. J. G. Hastings, Notary Public, Deaf Smith County, Texas. (Seal.)

DIRECT EXAMINATION OF WITNESS F. D. GIBSON BY MR. COLLINS

Q. State your name?

A. F. D. Gibson.

Q. Where do you live, Mr. Gibson?

A. I live about four miles northwest of Glen Rio.

Q. How long have you lived in this part of the country?

A. Twenty-one years.

Q. What is your business, Mr. Gibson?

A. Cattle business.

Q. How long have you been engaged in the cattle business?

A. About thirty years.

Q. Do you remember the storm on the 7th day of January 1920?

A. I do not remember the exact date, but sometime between the first and fifteenth of January.

Q. If you had had a shipment of fat cattle loaded in cars and moving east at the time this storm was in progress, would you prefer them to have been unloaded and placed in the pens where they could be fed and watered or that they remain in the cars and run the risk of being snowbound at some point between Glen Rio and Vega, Texas?

A. I would rather have them unloaded here.

Q. Is there any place between Glen Rio and Adrian at which feed and water were available in January 1920?

A. There is none.

Q. That is all.

F. D. Gibson.

Subscribed and sworn to before me by the said F. D. Gibson this 27th day of October, A. D. 1922. J. G. Hastings, Notary Public, Deaf Smith County, Texas. (Seal.)

[fol. 139] CERTIFICATE

I, J. G. Hastings, a Notary Public, authorized to swear witnesses and take testimony in the County of Deaf Smith, State of Texas, under the laws of the said State of Texas, do hereby certify that the above named U. S. Devor, James D. Phipps, F. L. Dolton, W. L.

Batson and F. D. Gibson, witnesses whose names are subscribed to the foregoing depositions, were by me first duly sworn to testify the truth, the whole truth and nothing but the truth, in the case aforesaid, and that the depositions by them respectively subscribed to were, by A. L. Biggs, a proper person, taken on the typewriter and subscribed to by the respective witnesses in my presence, and the same were taken on the 27th day of October, 1922, between the hours of 8:00 A. M. and 6:00 P. M. of said day, at the Passenger Station of The Chicago, Rock Island and Gulf Railway Company, in the City of Glen Rio, in the County of Deaf Smith, State of Texas, as specified in the notice hereto attached; that I am not an attorney or relative of either of said parties or otherwise interested in the event of this action.

J. G. Hastings, Notary Public, Deaf Smith Co., Texas.
(Seal.)

Said depositions were properly sealed and addressed, and endorsed, and stamped on the envelope the following: Filed in District Court, Oklahoma County, Oklahoma, Oct. 30, 1922. Cliff Myers, Court Clerk, by Carl Traub, Deputy.

[fol. 140] Thereupon the defendant rested his case.
And the plaintiffs again rested their case.

And he it remembered That the above and foregoing was and is all of the evidence, of every nature and kind whatsoever, offered, and introduced and heard, upon the trial of said cause.

Whereupon, at the conclusion of all the evidence, and before the court had instructed the jury as to the law in said cause governing, came the plaintiffs, in due time, and presented to the court their certain requested instructions, in writing, a true copy of the same, with all endorsements and notations thereon, being then and now as follows, to-wit:

[fol. 141] In the District Court of Oklahoma County

[Title omitted]

Instructions Requested by Plaintiffs—Filed November 2, 1922

1. You are instructed that, when the defendants contracted to carry the cattle of plaintiffs to their destination, the law imposed upon them an obligation to carry them in a proper manner, and deliver them in good condition considering the ordinary perils of the road; and if they failed to deliver them in such condition, they are responsible in damages for such failure.

2. If you find from the evidence that said shipment of cattle was unreasonably delayed through the negligence of the defendants, and that as a result of such negligent delay, if any, said cattle shrank

in weight and presented a gaunt appearance when placed upon the market at Oklahoma City, and that such shrinkage and bad appearance, if any, affected their selling price on the market, then you will find for the plaintiffs in such sum as as will represent the difference on account of such extra shrinkage and stale appearance, [fols. 142 & 143] between amounts which was received by the plaintiffs for said cattle and what they would have received if it had not been for such extra shrinkage and bad appearance, if any.

3. You are instructed that, if you find a verdict in favor of the plaintiffs for damages, you will fix the amount of their recovery at the difference if any, between the value of the cattle at Oklahoma City, at the time and in the condition you find from the evidence they were delivered there, and what you find from the evidence the value would have been if they had been transported and delivered by the defendants within a reasonable time and with ordinary care.

4. You are charged that, if the defendants delayed the train upon which the plaintiffs' cattle were being hauled while said cattle were in transit an unreasonable time, then burden of proof shifts to the defendants to show that said delay was unavoidable and could not have been avoided by the use of ordinary care and dilagence, and, if you find from the evidence that said cattle were delayed an unreasonable time in transit, and the defendants have failed to show that said delay was necessary and could not have been reasonably avoided, as hereinafter charged, then your verdict shall be for the plaintiffs for such amount as you may find reasonable from all the evidence in the case.

Suits & Hall, Attorneys for Plaintiff.

[File endorsement omitted.]

[fol. 144] In the District Court, Oklahoma County

[Title omitted]

Defendant's Requested Instructions—Filed November 2, 1922

Now comes the defendant above named and requests the court to instruct the jury as follows:

Defendant's Requested Instruction No. One

You are instructed to return a verdict for the defendant.

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

Refused. Exception allowed. Frank Mathews, Judge.

Defendant's Requested Instruction No. Two

(This instruction in the language and form requested appears below in the ordinary typewriting, and the language added by the court, in the handwriting of the Judge, modifying same, follows in capital letters parenthesized.)

You are instructed that the railroad of The Chicago, Rock Island and Pacific Railway Company in this case was a connecting carrier, and that, although you may believe that plaintiffs' cattle were delivered to the El Paso and Southwestern Company, the initial carrier, in good condition, yet there is no presumption that any dam- [fol. 145] age or injury occurred upon The Chicago, Rock Island and Pacific Railroad merely by reason of the fact that they may have been found to be injured at the time they were delivered and unloaded at destination; but, in order for plaintiffs to recover in this case you must find and believe, from a fair preponderance of the evidence, that the injury, if any, to said cattle occurred on the railroad of The Chicago, Rock Island and Pacific Railway Company [and not upon some other road]* (OR UPON THE CHICAGO, ROCK ISLAND & GULF RAILWAY, PROVIDED YOU FURTHER FIND SAID GULF RAILWAY CONSTITUTED A SINGLE SYSTEM WITH THE SAID PACIFIC RAILWAY.)

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

Modification is shown in handwriting of Judge in parenthesis. To the giving of the above instruction as modified, and refusal to give same as requested, defendant at the time, in open court, duly excepted.

Given, as amended. Exception allowed deft. Frank Mathews, Judge.

Defendant's Requested Instruction No. Three

(This instruction in the language and form requested appears below in the ordinary typewriting, and the language added by the court, in the handwriting of the Judge, modifying same, follows in capital letters parenthesized.)

You are instructed that the mere fact that plaintiffs' cattle were in good condition when delivered for transportation to another railroad in another state, and were in a damaged condition when delivered at Oklahoma City by the Director General of Railroads, then in charge of the railroad of The Chicago, Rock Island and Pacific Railway Company, is not of itself sufficient to authorize plaintiffs to recover in this case, but in order for you to hold the defendant [fol. 146] liable, you must find and believe from the evidence that there was a loss and damage to plaintiffs' cattle while the same were

[*Words enclosed in brackets erased in copy.]

in the possession of the agency in charge of The Chicago, Rock Island and Pacific Railroad, caused by those in charge of said railroad (OR BY THE CHICAGO, ROCK ISLAND & GULF RAILWAY, PROVIDED YOU HERE FOUND SAID GULF RAILWAY CONSTITUTED ONE SYSTEM WITH THE SAID PACIFIC RAILWAY.)

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

To the giving of the above instruction as modified the defendant at the time in open court duly excepted. (Modification is shown in handwriting of Judge in parenthesis.)

Given, as amended. Exception allowed deft. Frank Mathews, Judge.

Defendant's Requested Instruction No. Four

(This instruction in the language and form requested appears below in the ordinary typewriting, and the language added by the court, in the handwriting of the Judge, modifying same, follows in capital letters parenthesized.)

You are instructed that the plaintiffs are not entitled to recover for any loss or injury to their cattle involved in this case which occurred upon any railroad other than that of The Chicago, Rock Island and Pacific Railway Company, (OR THAT OF THE CHICAGO, ROCK ISLAND & GULF RAILWAY, PROVIDED YOU HAVE FOUND SAID GULF RAILWAY CONSTITUTED ONE SYSTEM WITH SAID PACIFIC RAILWAY).

W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

Modification is shown in handwriting of Judge in parenthesis. To the giving of above instruction as modified and refusal to give same as requested defendant at the time in open court duly excepted.

Given, as amended. Exception allowed deft. Frank Mathews, Judge.

[fol. 147] Defendant's Requested Instruction No. Five

(This instruction in the language and form requested appears below in the ordinary typewriting, and the language added by the court, in the handwriting of the Judge, modifying same, follows in capital letters parenthesized.)

If you should find for plaintiffs you are instructed, under the circumstances in this case, that your verdict must be limited to the actual loss, if any, they may have suffered by depreciation in the market value of their cattle caused while in the hands of the agency in charge of the Chicago, Rock Island and Pacific Railroad, (OR THAT OF THE CHICAGO, ROCK ISLAND & GULF RAILWAY,

PROVIDED YOU HAVE FOUND SAID GULF RAILWAY CONSTITUTED WITH SAID PACIFIC RAILWAY A SINGLE SYSTEM.)

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

Modification is shown in handwriting of Judge in parenthesis. To the giving of above instruction, as modified, and refusal to give same as requested defendant at the time in open court duly excepted.

Given, as amended. Exception allowed. Frank Mathews, Judge.

Defendant's Requested Instruction No. Six

You are instructed that the Director General of Railroads, in charge of the railroad of The Chicago, Rock Island and Pacific Railway Company, at the time of the shipment in question, was not bound to transport plaintiffs' cattle by special train nor within any given time, or to deliver them in time for any particular market.

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

Given. Frank Mathews, Judge.

[fol. 148] Defendant's Requested Instruction No. Seven

You are instructed that the Director General of Railroads, in charge of the Chicago, Rock Island and Pacific Railroad, was not required to transport the cattle of plaintiffs except by regular freight trains over that road; and if, after said cattle had arrived over the El Paso and Southwestern Railroad at Tucumcari, New Mexico, the same were delayed there only while awaiting the departure of the first freight train from that point toward their destination, and were carried upon said train, defendant in this case is not liable for any damage plaintiff may have sustained by reason of such delay.

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

Given. Frank Mathews, Judge.

Defendant's Requested Instruction No. Eight

(This instruction in the language and form requested appears below in the ordinary typewriting, and the language added by the court, in the handwriting of the Judge, modifying same, follows in capital letters parenthesized.)

You are instructed that the undisputed evidence in this case discloses that the railroad of The Chicago, Rock Island and Pacific Railway Company connects with that of The El Paso and Southwestern at Tucumcari, New Mexico, and that of The Chicago, Rock Island

and Gulf Railroad at the New Mexico and Texas State Line, and also at the Texas-Oklahoma State line; and that the defendant in this case, if liable at all, is liable to plaintiffs only for and on account of such loss and damage as you may determine, from a fair preponderance of the evidence, was caused by the Director General of [fol. 149] Railroads in the transportation of such cattle while the same were in the possession of the Director General of Railroads in charge of the railroad of The Chicago, Rock Island and Pacific Railway Company, and while the same were being transported over said railroad, (OR UPON THE CHICAGO, ROCK ISLAND AND GULF RAILWAY PROVIDED YOU HAVE FOUND SAID GULF RAILWAY CONSTITUTED A SINGLE SYSTEM WITH SAID PACIFIC RAILWAY.)

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

Modification shown in handwriting of Judge in parenthesis.

To the giving of above instruction, as modified, and refusal to give same as requested defendant, at the time, in open court, duly excepted.

Given, as amended. Exception allowed. Frank Mathews, Judge.

Defendant's Requested Instruction No. Nine

You are instructed that the shipment involved in this case was interstate, and that the mere fact, if it be a fact, that the cattle of plaintiffs were in good condition when received by the initial carrier, another railroad in another state, and were in a damaged condition when delivered by the officers and servants in charge of the railroad of The Chicago, Rock Island and Pacific Railway Company at Oklahoma City, raises no presumption that such damage occurred on said Chicago, Rock Island and Pacific Railroad.

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

Given. Frank Mathews, Judge.

[fols. 150 & 151] [File endorsement omitted.]

[fol. 152] In the District Court for Oklahoma County

[Title omitted]

Instructions to Jury—Filed November 2, 1922

Gentlemen of the Jury: The plaintiffs, for cause of action against the defendant, allege that the defendant, at all times complained of, was agent of the United States Railroad Administration

and of the Chicago, Rock Island & Pacific Railway Company and Chicago, Rock Island & Gulf Railway Company, known as the Rock Island Lines; that said line extends east from Tucumcari, New Mexico, to Texola, a station on said line between Texas and Oklahoma, and is known as the Chicago, Rock Island & Gulf Railway, but plaintiffs' allege that said Company is a subsidiary company owned and operated by the Chicago, Rock Island & Pacific Railway Company, and that said Chicago, Rock Island & Pacific Railway Company owns and controls said line of railroad and that the officers and agents located at Amarillo, Texas, transact the business of both lines and represent said railroads in their official capacity; that the dispatcher at Amarilla, Texas, handles all trains between Tucumcari, New Mexico, and Sayre, Oklahoma, and that from Sayre, Oklahoma, east trains are handled by the dispatcher at El Reno, Oklahoma.

[fol. 153] Plaintiffs further state that in the latter part of the year 1919 they entered into negotiations for the purchase of 564 head of cattle located on Mitchell's ranch in New Mexico; that before purchasing said cattle, plaintiffs took up the matter with one Peterson, defendant's livestock agent at Amarillo, Texas, who agreed to furnish 24 cars, and that said Peterson was advised that part of said cattle were near Roy and that the plaintiffs wanted to load from Roy and Middlewater, and that said Peterson agreed to deliver part of said cars at Middlewater and the other cars to be delivered at Roy, on January 3rd, and that said shipment would be consolidated in a special stock train at Tucumcari and moved to Oklahoma City without unloading.

Plaintiffs further state that the cattle to be loaded at Middlewater were driven to Campana, a station on the E. P. & S. W. Railway Line, and loaded on January 6th, 1920, and that said nine cars loaded at Campana were delivered to the Chicago, Rock Island & Gulf Railway at Tucumcari at about 7 o'clock p. m. on the 6th day of January, 1920.

Plaintiffs further state that said cattle were in good condition when they were loaded at Campana in New Mexico and in good condition when they were delivered to the Chicago, Rock Island & Gulf Railway at Tucumcari; that the defendant agreed to safely transport said cattle to the market at Oklahoma City, Oklahoma, within a reasonable time, and that a reasonable time for transporting said cattle from Tucumcari, New Mexico, to Oklahoma City, Oklahoma, is about 35 or 40 hours.

Plaintiffs further state that the defendant delayed said shipment of cattle at Tucumcari about 10 hours and at Glenrio about 51 hours, and at other stations and points along the line of said [fol. 154] defendant, and that said cattle were on the road and standing in the cars about 72 hours longer than necessary and reasonable, and that by reason thereof said cattle were greatly injured in looks and appearance and were caused to lose extra flesh, to the amount of about 50 pounds per head.

Plaintiffs further state that said nine cars of cattle consisted of 277 head of an average weight of 965 pounds and that on account of the excess shrink of 50 pounds per head they were damaged in

excess shrink and weight 11,350 pounds at $9.65 per 100 pounds, and in the total sum of $1,095.27.

Plaintiffs further state that said shipment of cattle was further damaged to the extent of 25 cents per 100 pounds on account of their stale and stupid looks and by reason thereof brought 25 cents per hundred less than they would have brought if they had been transported within a reasonable time; that said shipment weighed 191,300 pounds, and that plaintiffs were damaged in this particular in the sum of $478.32.

Plaintiffs further state that said cattle were unloaded at Glenrio and held for a period of 60 hours and caused plaintiffs extra expense for feed and care of said cattle at said place, in the sum of $177.62.

For all of which sums plaintiffs ask judgment.

The defendant, Railroad Administrator, answering as such administrator, for the Chicago, Rock Island & Pacific Railway Company, says that he denies each and every allegation in plaintiffs' petition contained, except he admits he is administrator for said railway.

Said administrator, further answering, says that at all times complained of in plaintiffs' petition that the Chicago, Rock Island & Pacific Railway Company and the Chicago, Rock Island & Gulf [fol. 155] Railway Company and the El Paso & Southwestern Railway Company were each being used and operated by the President of the United States in interstate commerce, and that each was operated as a separate, individual and dsitinct entity, and that the shipment of cattle of plaintiffs was interstate commerce.

You are instructed in the law of the case as follows:

(1)

The burden of proof herein rests upon the plaintiffs to prove by a fair preponderance of the evidence every material allegation in their petition contained.

(2)

In this case service of process has been had upon the Chicago, Rock Island & Pacific Railway only and the action is against said Chicago, Rock Island & Pacific Railway and the Chicago, Rock Island & Gulf Railway, and it is the contention of plaintiffs in this case that the Chicago, Rock Island & Pacific Railway and the Chicago, Rock Island & Gulf Railway constitute a single entity and that the Chicago, Rock Island & Pacific Railway owns, controls and operates the Chicago, Rock Island & Gulf Railway, and that the two constitutes a single system, while this contention is denied by the defendant, it being his contention that they constitute two separate and distinct railroads, and that one is not liable for the actions of the other

You are instructed that where two railway companies are incorporated under the laws of different states but that their tracks connect at the state line and together form a continuous line of railway extending from one state into another and both said railway companies use the same headquarters and have the same managing

[fol. 156] and operating officers and employ and use the same engineers, and train crews and jointly operate through trains using the same crews over both lines of road and deposit the earnings of both companies in one common fund received, handled and disbursed by a common auditor of both companies and from which common funds employees and expenses of both companies are paid and that the same common managing officers of both companies manage and control the employees of the two roads, then persons, shipping stock over both of said roads and when said stock is damaged by either of said roads as a result of negligence and carelessness of the servants and agents of either of said roads, may sue one or both of said companies in the courts of either state.

To the giving of above instruction No. 2 defendant at the time in open court duly excepted.

Frank Mathews, Judge.

(3)

Therefore, should you find from a fair preponderance of the evidence in this case that the Chicago, Rock Island & Pacific Railway and the Chicago, Rock Island & Gulf Railway at all times complained of were operating a common railroad and that their tracks connected at the state line between Texas and Oklahoma and together formed a continuous line of railway extending into both states, both of said companies were using the same headquarters and having the same managing and operating officers and handled and used the same engineers and train crews and used indiscriminately each others' engines, cars and trains and jointly operated trains from one state into the other and that they deposited the earnings of both companies in one common fund disbursed by a common auditor of both companies and from which common fund the employees and expenses [fol. 157] of both companies were paid, and that the same common managing officers of both companies had authority over the employees of both companies and all of whom were required to work on either company's line of railway, then, under such a finding, you are instructed that the plaintiffs can maintain this cause of action against both railways, notwithstanding the service of process has been upon the Chicago, Rock Island & Pacific Railway Company only.

But unless you find all of the foregoing averments in the affirmative, then you are instructed that this action can be maintained only against the Chicago, Rock Island & Pacific Railway, and that the Chicago, Rock Island & Pacific Railway cannot be held liable for any damage that may have been occasioned to the cattle in controversy while upon the tracks and in the possession of the Chicago, Rock Island & Gulf Railway. And unless you have found the foregoing averments in the affirmative, then these instructions will apply only to the conduct and manner of handling the cattle in controversy by the Chicago, Rock Island & Pacific Railway after the same had been delivered to it by the Chicago, Rock Island & Gulf Railway at Texola, Oklahoma.

To the giving of above instruction No. 3 defendant at the time in open court duly excepted.

Frank Mathews, Judge.

(4)

The jury are instructed that when a railroad company contracts to forward livestock to any particular point, it contracts to forward and deliver the same to that point within a reasonable time, and a carrier of livestock for pay must exercise reasonable diligence and complete the journey within a reasonable time, and if it does not do [fol. 158] so and the stock is injured by the delay, the railroad will be liable to the owner for all damage caused by such delay.

You are further instructed that what would be an unreasonable delay in forwarding and transporting cattle or what would be a reasonable time within which said cattle should have been transported, are questions of fact for your determination, from all the facts and circumstances in evidence before you.

To the giving of above instruction No. 4 defendant at the time in open court duly excepted.

Frank Mathews, Judge.

(5)

A common carrier of livestock is not an insurer as to the time at which said livestock shall arrive at their destination, but it is bound to carry them to their destination in a reasonable time after they are received.

(6)

You are further instructed that "reasonable care" as used in these instructions is meant such care as would be exercised by an ordinarily prudent person under the same or similar circumstances. And by "reasonable time" is meant that time which persons in the exercise of reasonable care and diligence could have delivered the cattle under the same or similar circumstances.

(7)

Should you have found the issues submitted in paragraphs 2 and 3 in favor of the plaintiffs, that is, that the Chicago, Rock Island & Pacific and Chicago, Rock Island & Gulf Railways constituted, at [fol. 159] all times complained of, a single system, operated as one road, as defined in said paragraphs 2 and 3, then you are further instructed that should you find from a fair preponderance of the testimony, that the nine cars of cattle in controversy were damaged when they arrived at Oklahoma City over and above the injury and damage that would necessarily be caused to a shipment of the kind and character as said livestock and in their conditions in making the trip from Tucumcari to Oklahoma City within a reasonable time, and that said excess damage, if any, was the direct and proximate result of the negligence and carelessness of the defendant as claimed in plaintiffs' petition, the- your verdict should be for the plaintiffs

for such excess damage, if any, as you find that said cattle received in being transported from Tucumcari, New Mexico, after reception at that point by defendant, to Oklahoma City, Oklahoma, and you will assess their damage as set out in the next paragraph; but should you have found the issues set out in paragraphs 2 and 3 in favor of the defendant, then you are instructed that should you find from a fair preponderance of the testimony that after said nine cars of livestock had been delivered to the Chicago, Rock Island & Pacific Railway at Texola, Oklahoma, that the said Railway Company, through its agents and employees, failed to transport said livestock from Texola, Oklahoma, to Oklahoma City with reasonable dispatch and that as a direct and proximate result of such failure on the part of said Company said livestock were damaged when they arrived at Oklahoma City over and above the injury or damage that would necessarily be caused to a shipment of its kind and character as said livestock would receive if forwarded with reasonable and customary dispatch, then your verdict should be for the plaintiffs; and unless you find one or the other of these issues in favor of the plaintiffs, then your verdict should be for the defendant.

[fol. 160] To the giving of above instruction No. 7 defendant at the time in open court duly excepted.

Frank Mathews, Judge.

(8)

Should your verdict in this case be for the plaintiffs then you are instructed that if you find from a fair preponderance of the testimony that there was a shrinkage in said cattle after being delivered to defendant in excess of the natural shrinkage, which was directly caused by the negligent delay of the defendant, then your verdict should be in favor of the plaintiffs for the damage caused by such excess shrinkage, not to exceed $1,095.27.

Should you further find that said cattle were damaged on account of being rendered stale and stupid in appearance, then your verdict should also be for such sum as you find plaintiffs have been damaged thereby in excess of what the ordinary damage would have been, not to exceed $478.32.

Should you further find that on account of the negligent delay, if any, of the defendant in making said shipment the plaintiffs were necessarily caused to expend money for extra feed, then your verdict should be for such outlay, not to exceed $177.62, the amount claimed in the petition.

But should you have found for the plaintiff in assessing their damage you should not include any damage incurred by said cattle while in the hands of the Chicago, Rock Island & Gulf Railway, unless you have found that said Chicago, Rock Island & Gulf Railway constituted with the Chicago, Rock Island & Pacific Railway a single system and entity as defined to you in paragraphs 2 and 3 of these instructions.

To the giving of above instruction No. 8 defendant at the time in open court duly excepted.

Frank Mathews, Judge.

[fol. 161] (9)

(Defendant's Requested Instruction No. 2)

You are instructed that the railroad of The Chicago, Rock Island and Pacific Railway Company in this case was a connecting carrier, and that, although you may believe that plaintiffs' cattle were delivered to the El Paso and Southwestern Company, the initial carrier, in good condition, yet there is no presumption that any damage or injury occurred upon The Chicago, Rock Island and Pacific Railroad merely by reason of the fact that they may have been found to be injured at the time they were delivered and unloaded at destination; but, in order for plaintiffs to recover in this case you must find and believe, from a fair preponderance of the evidence, that the injury, if any, to said cattle occurred on the railroad of The Chicago, Rock Island and Pacific Railway Company, (OR UPON THE CHICAGO, R. I. & GULF RAILWAY, PROVIDED YOU FURTHER FIND SAID GULF RAILWAY CONSTITUTED A SINGLE SYSTEM WITH THE SAID PACIFIC COMPANY.)

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

Modification is shown in handwriting of Judge in parenthesis.

To the giving of the above instruction, as modified, and refusal to give same as requested defendant at the time in open court duly excepted.

Given, as amended. Exception allowed deft. Frank Mathews, Judge.

(10)

(Defendant's Requested Instruction No. 3)

You are instructed that the mere fact that plaintiffs' cattle were in good condition when delivered for transportation to another railroad in another state, and were in a damaged condition when delivered at Oklahoma City by the Director General of Railroads, then [fol. 162] in charge of the railroad of The Chicago, Rock Island and Pacific Railway Company, is not of itself sufficient to authorize plaintiffs to recover in this case, but in order for you to hold the defendant liable, you must find and believe from the evidence that there was a loss and damage to plaintiffs' cattle while the same were in the possession of the agency in charge of The Chicago, Rock Island and Pacific Railroad, caused by those in charge of said railroad, (OR BY THE CHICAGO, ROCK ISLAND & GULF RAILWAY, PROVIDED YOU HAVE FOUND SAID GULF RAILWAY CONSTITUTED ONE SYSTEM WITH THE SAID PACIFIC RAILWAY.)

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

To the giving of the above instruction, as modified, the defendant at the time in open court duly excepted. (Modification is shown in handwriting of Judge in parenthesis.)

Given, as amended. Exception allowed deft. Frank Mathews, Judge.

(11)

(Defendant's Requested Instruction No. 4)

You are instructed that the plaintiffs are not entitled to recover for any loss or injury to their cattle involved in this case which occurred upon any railroad other than that of The Chicago, Rock Island & Pacific Railway Company, (OR THAT OF THE CHICAGO, ROCK ISLAND & GULF RAILWAY, PROVIDED YOU HAVE FOUND SAID GULF RAILWAY CONSTITUTED ONE SYSTEM WITH SAID PACIFIC RAILWAY.)

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

Modification is shown in handwriting of Judge in parenthesis.
To the giving of above instruction, as modified, and refusal to give same as requested defendant at the time in open court duly excepted.

Given, as amended. Exception allowed deft. Frank Mathews, Judge.

[fol. 163] (12)

(Defendant's Requested Instruction No. 5)

If you should find for plaintiffs you are instructed, under the circumstances in this case, that your verdict must be limited to the actual loss, if any, they may have suffered by depreciation in the market value of their cattle caused while in the hands of the agency in charge of the Chicago, Rock Island and Pacific Railroad, (OR THAT OF THE CHICAGO, ROCK ISLAND & GULF RAILWAY, PROVIDED YOU HAVE FOUND SAID GULF RAILWAY CONSTITUTED WITH SAID PACIFIC RAILWAY A SINGLE SYSTEM.)

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

Modification is shown in handwriting of Judge in parenthesis. To the giving of above instruction, as modified, and refusal to give same as requested defendant at the time in open court duly excepted.

Given, as amended. Exception allowed. Frank Mathews, Judge.

(13)

(Defendant's Requested Instruction No. 6)

You are instructed that the Director General of Railroads, in charge of the railroad of The Chicago, Rock Island and Pacific Railway Company, at the time of the shipment in question, was not bound to transport plaintiffs' cattle by special train nor within any given time, or to deliver them in time for any particular market.

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

Given. Frank Mathews, Judge.

[fol. 164] (14)

(Defendant's Requested Instruction No. 7)

You are instructed that the Director General of Railroads, in charge of the Chicago, Rock Island and Pacific Railroad, was not required to transport the cattle of plaintiffs except by regular freight trains over that road; and if, after said cattle had arrived over the El Paso and Southwestern Railroad at Tucumcari, New Mexico, the same were delayed there only while awaiting the departure of the first freight train from that point toward their destination, and were carried upon said train, defendant in this case is not liable for any damage plaintiff may have sustained by reason of such delay.

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

Given. Frank Mathews, Judge.

(15)

(Defendant's Requested Instruction No. 8)

You are instructed that the undisputed evidence in this case discloses that the railroad of The Chicago, Rock Island and Pacific Railway Company connects with that of The El Paso and Southwestern at Tucumcari, New Mexico, and that of The Chicago, Rock Island and Gulf Railroad at the New Mexico and Texas State line, and also at the Texas-Oklahoma State line, and that the defendant in this case, if liable at all, is liable to plaintiffs only for and on account of such loss and damage as you may determine, from a fair preponderance of the evidence, was caused by the Director General of Railroads in the transportation of such cattle while the same were in the possession of the Director General of Railroads in charge of the railroad of The Chicago, Rock Island and Pacific Railway Company, and while the same were being transported over said rail-
[fol. 165] road. (OR UPON THE CHICAGO, ROCK ISLAND AND GULF RAILWAY, PROVIDED YOU HAVE FOUND SAID

GULF RAILWAY CONSTITUTED A SINGLE SYSTEM WITH SAID PACIFIC RAILWAY).

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

Modification shown in handwriting of Judge in parenthesis. To the giving of above instruction, as modified, and refusal to give same as requested defendant at the time in open court duly excepted.

Given, as amended—exception allowed. Frank Mathews, Judge.

(16)

(Defendant's Requested Instruction No. 9)

You are instructed that the shipment involved in this case was interstate, and that the mere fact, if it be a fact, that the cattle of plaintiffs were in good condition when received by the initial carrier, another railroad in another State, and were in a damaged condition when delivered by the officers and servants in charge of the railroad of The Chicago, Rock Island and Pacific Railway Company at Oklahoma City, raises no presumption that such damage occurred on said Chicago, Rock Island and Pacific Railroad.

C. O. Blake, W. R. Bleakmore, W. F. Collins, Attorneys for Defendant.

Given. Frank Mathews, Judge.

[fol. 166] You are the sole and exclusive judges of the facts proven in this case, of the credibility of the witnesses who have testified herein, and of the weight and value to be given to their testimony; but for the law you must look to the court and be governed by these instructions.

Nine or more of your number can arrive at a verdict in this case. If nine or more and less than your whole number reach a verdict, those concurring therein must sign the same individually; but if your verdict is unanimous, then your foreman alone need sign it.

After arguments of counsel, forms of verdict will be handed you by the court.

Frank Mathews, Judge.

[File endorsement omitted.]

[fol. 167] Thereupon, at the conclusion of the giving of the foregoing instructions by the court to the jury, and after arguments of counsel, the jury retired, in charge of their duly sworn bailiff, to consider of their verdict in said cause to be rendered.

And thereafter, on the same day, to-wit, November 2nd, 1922, the jury returned into open court their certain verdict, in writing, in said cause, a true copy of the same, with all endorsements thereon, being then and now as follows:

[fol. 168] IN THE DISTRICT COURT OF THE THIRTEENTH JUDICIAL DISTRICT OF THE STATE OF OKLAHOMA, SITTING IN AND FOR OKLAHOMA COUNTY

[Title omitted]

VERDICT—Filed November 2, 1922

We, the jury, empaneled and sworn in the above-entitled cause, do, upon our oaths, find for the plaintiffs, and fix the amount of their recovery at $1,652.99.

H. P. Doughty, Foreman. H. K. Morris, Hugh McDonald, Herb Hanson, Mert Marker, R. P. Fletcher, B. Goerlitz, Fred Bomby, Thomas Thompson, W. G. Botts, Sam P. Shelburne.

[File endorsement omitted]

Which said verdict was by the court duly received, and the court clerk by the court directed to file the same and enter judgment thereon, which was accordingly done.

[fol. 169] IN DISTRICT COURT OF OKLAHOMA COUNTY

MINUTE ENTRIES

And be it further remembered That, in said court, on the 1st and 2d days of November, 1922, regular judicial days of the September, 1922, term of said court, the following proceedings were had and things done in said cause, as shown by Minute Journal 12 of said court, under dates of November 1st, 1922, and November 2nd, 1922, to-wit:

"November 1st, 1922.

Frank Mathews, Judge

[Title omitted]

At this time this case was called and comes on for trial; jury was called to the box—H. K. Morris, Fred Bomby, Thos. Thompson, Herb Hanson, Hugh McDonald, H. P. Doughty, W. G. Botts, Ed. Maddox, T. A. Henderson, R. P. Fletcher, Sam P. Shelburne, B. Goerlitz.

Both sides pass jury for cause.

Plaintiff's 1st challenge waive.

Defendant'-" " Excuse Ed. Maddox.—Mert Marker.

All other challenges waived.

The following jury was sworn to try the cause: H. K. Morris, Fred Bomby, Thomas Thompson, Herb Hanson, Hugh McDonald, H. P.

Doughty, W. G. Botts, Mert Marker, T. A. Henderson, R. P. Fletcher, Sam Shelburne, B. Goerlitz. 7 witnesses sworn.
At this time court adjourns until November 2d, 1922."

"November 2d, 1922.

Frank Mathews, Judge

[Title omitted]

At this time this cause was called, and all jury present; Further evidence introduced; Jury retires to deliberate; Returns to box; Agreed that Judge Phelps receive the verdict. Renders verdict for the plaintiffs in the sum of $1,652.99. Clerk directed to file and record verdict and enter judgment accordingly.
At this time this Court adjourned until November 3d, 1922."

[fols. 170 & 171] CERTIFICATE OF STENOGRAPHER

I, R. B. Cooke, acting official reporter for the district court of Oklahoma County, Oklahoma, at the September, 1922, term thereof, do hereby certify:

That I did, as such reporter, on the first and second days of November, 1922, report all evidence and proceedings on the the trial of said cause numbered 32406, entitled L. D. Alexander and Frank Griffith, Plaintiffs, vs. James C. Davis, Agent United — Railroad Administration, in charge of Chicago, Rock Island & Pacific Railroad and Chicago, Rock Island & Gulf Railroad, under Transportation Act 1920, Defendant; that I afterwards transcribed my shorthand notes of said evidence and proceedings, and that the foregoing numbered typewritten sheets, numbered from — to —; both inclusive, is a true and correct transcript of all the evidence and proceedings on said trial, and that the same is correct.

Dated this January 10th, 1923.

R. B. Cooke, Official Reporter.

[fol. 172] IN THE DISTRICT COURT, OKLAHOMA COUNTY

[Title omitted]

MOTION FOR NEW TRIAL—Filed November 3, 1922

Now comes the defendant above named and moves the court to vacate, set aside and hold for naught the verdict of the jury returned in this action in favor of the plaintiffs and against the defendant,

and to grant him a new trial for the following causes affecting materially his substantial rights, to-wit:

1. Excessive damages appearings to have been given under the influence of passion and prejudice.

2. Error in the assessment of the amount of recovery, in that the same is too large.

3. That the verdict of the jury is not sustained by sufficient evidence.

[fols. 173 & 174] 4. That the verdict of the jury is contrary to law.

5. Errors of law occurring at the trial and excepted to by the defendant.

C. O. Blake, W. R. Bleakmore, A. T. Boys, W. F. Collins, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 175] IN THE DISTRICT COURT, OKLAHOMA COUNTY

[Title omitted]

ORDER OVERRULING MOTION FOR NEW TRIAL—Filed November 3, 1922

Now on this the 3rd day of November, 1922, the same being one of the regular juridicial days of the September, 1922 term of this court, this cause came on for hearing upon the motion of the defendant for a new trial, and both parties appearing by their respective attorneys, the court, after hearing said motion and being fully advised in the premises, doth overrule said motion for a new trial, to which action and ruling of the court the defendant at the time, in open court, duly excepted, and at the time, in open court, and in the presence of the attorneys representing plaintiffs, gave notice of his intention to appeal to the Supreme Court of the State of Oklahoma, which notice, by order and direction of the court, [fol. 176 & 177] was entered upon the docket; and for good cause shown the statutory time allowed the defendant for making and serving a case-made is hereby extended, and the defendant is allowed ninety (90) days from and after this date within which to prepare and serve a case-made, and the plaintiff is allowed ten (10) days thereafter within which to suggest amendments to said case-made, said case-made to be settled and signed upon five (5) days' written notice by either party.

Frank Mathews, Judge.

[File endorsement omitted.]

[fol. 178] IN THE DISTRICT COURT, COUNTY OF OKLAHOMA

[Title omitted]

JOURNAL ENTRY OF JUDGMENT

Now, on this first day of November, 1922, this cause coming on to be heard in its regular order, the plaintiffs appearing by their attorneys, Suits & Hall, and the defendants appearing by their attorneys, W. R. Bleakmore and W. E. Collins, and both parties having announced ready for trial, a jury of twelve good men was duly impaneled and were sworn to try said cause.

Said cause was tried to said jury, and, after having heard the evidence, instructions of the court, the arguments of counsel, said cause was duly submitted to said jury, and, thereafter, on the second day of November, 1922, said jury returned into said court its verdict, in words and figures as follows, to wit:

"We, the jury duly impaneled and sworn in the above entitled cause, do, upon our oaths, find for the plaintiffs and fix the amount of their recovery at $1,652.99."

It is, therefore, ordered, adjudged and decreed that said plaintiffs have and recover of and from the defendants the sum of one [fol. 179] thousand six hundred fifty-two dollars and ninety-nine cents ($1,652.99), together with the costs of this case, and interest at the rate of six per cent per annum from this date; to which judgment the defendants then and there in open court excepted.

Frank Mathews, District Judge.

O. K. Suits & Hall, Attys. for Pltf. W. R. Bleakmore, Atty. for Deft.

[File endorsement omitted.]

[fol. 180] STATE OF OKLAHOMA,
Oklahoma County, ss:

CERTIFICATE OF COURT CLERK

I, Cliff Myers, Court Clerk for said county, do hereby certify that the foregoing is a full, true and correct transcript of the record in the above entitled cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Oklahoma City, Oklahoma County, State of Oklahoma, this 10 day of January, 1923.

Cliff Myers, Court Clerk, by Fritz Blumenthal, Deputy.
(Seal.)

[fol. 181] STATEMENT OF COMPLETE CASE-MADE

And be it remembered That the foregoing case-made contains a full, true, correct and complete copy and transcript of all the proceedings in said cause, including all pleadings filed and proceedings had, all the evidence offered or introduced by both parties plaintiffs and defendant, all orders and rulings made and exceptions allowed, and all of the record upon which the judgment and journal entry in said cause were made and entered, and that the same is a full, true, correct and complete case-made.

[fol. 182] ACKNOWLEDGMENT SERVICE CASE-MADE

We, the undersigned, attorneys of record for the plaintiffs in the above entitled cause, do hereby acknowledge service of this case-made, this 29th day of January, 1923.

Suits & Hall, Attorneys of Record for Plaintiffs, L. D. Alexander and Frank Griffith.

STIPULATION RE CASE-MADE

It is hereby stipulated and agreed, by and between the parties hereto, that the foregoing case-made contains a full, true, correct and complete copy and transcript of all of the pleadings and proceedings had, all the evidence offered and introduced, all objections of counsel, all the orders and rulings made and exceptions allowed and all of the record upon which the judgment and journal entry in said case were made; and the same is a full, true, complete and correct case-made; and the plaintiffs waive the right to suggest amendments to said case-made and hereby consent that the same may be settled immediately and without notice, and hereby join in the request of the defendant that the Judge of said Court settle the same and order the same certified by the Court Clerk and filed according to law.

Dated this 29th day of January, 1923.

Suits & Hall, Attorneys for Plaintiffs. C. O. Blake, W. R. Bleakmore, Attorneys for Defendant.

[fol. 183] IN THE DISTRICT COURT FOR OKLAHOMA COUNTY, OKLAHOMA

[Title omitted]

CERTIFICATE OF DISTRICT JUDGE

I, the undersigned, the Judge of the District Court of Oklahoma County, Oklahoma at the time of the trial of the above entitled and numbered cause, and who tried said cause and rendered the

judgment and made the orders therein, do hereby certify that the above and foregoing case-made was presented to me as a full, true, complete and correct case-made in said cause; that the same has been duly served upon attorneys for plaintiffs above named, and that all suggestions of amendments to said case-made have been waived by attorneys for plaintiff, and they have agreed that the same may be settled and signed immediately without further notice to them, and have stipulated and agreed that the same is a full, true, complete and correct case-made, containing a full, true, correct and complete copy and transcript of all the pleadings and proceedings had, all the evidence offered and introduced, all objections of counsel, all orders and rulings made and exceptions allowed, and all of the record upon which the judgment in said case was rendered;

Therefore, I, the Judge of the above entitled court, who tried said [fol. 184] cause, do hereby sign and settle the above and foregoing case-made as a full, true, complete and correct case-made in said cause, and direct that the same be attested by the Court Clerk of Oklahoma County and filed by him in said District Court of Oklahoma County, to be thereafter withdrawn and delivered to the defendant above named for filing in the Supreme Court of the State of Oklahoma.

Witness my hand on this the 8 day of February, 1923.
Frank Mathews, District Judge.

Attest: Cliff Myers, Court Clerk, by Fritz Blumenthal, Deputy. (Seal.)

[fol. 185] SUPREME COURT OF OKLAHOMA

[Title omitted]

JUDGMENT—November 6th, 1923

And now this cause comes on for final decision and determination by the court upon the record and briefs filed therein.

And the court having considered the same finds that the judgment of the trial court in the above cause should be affirmed.

It is therefore ordered and adjudged by the court that the judgment of the trial court in the above cause be, and the same is hereby affirmed.

Opinion by Jarman, C.

[fol. 186] IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

[Title omitted]

OPINION—Filed November 6, 1923

[File endorsement omitted.]

Syllabus

1. The Director General of Railroads, while operating the railroads under Federal Control assumed by the President under Act Aug. 29, 1916, and the Federal Control Act of March 21, 1918, (Comp. St. 1918, Camp. St. Ann. Supp. 1919,—3115¾ a-315¾ p.), operated the railroads as a single national system of transportation under a unified head or control, and not as separate companies or systems; and the Director General was responsible for damages sustained through the negligent operation of said railroads during Federal Control, regardless of what road or roads, in the operation of which, such negligence occurred, and without regard to the relation, affiliation or association of said roads in their corporate capacity.

2. Under the Transportation Act, 1920, an action against the Federal Agent of railroads for damages, suffered from the operation of railroads under Federal Control, is an action against the United States, and not against the railroads; and service of process, within the venue provided by Transportation Act, 1920 on the Service Agent for any of the railroads, gives jurisdiction over the Federal Agent as to all of the railroads, in the operation of which during Federal Control, the damages complained of resulted.

3. Instructions given, which do not affect the substantial rights of a party, although erroneous, will be considered as harmless error, and will not be reviewed by the Supreme Court on appeal.

Error from the District Court of Oklahoma County

Hon. Frank Mathews, Judge

Action by L. D. Alexander and Frank Griffith against James C. Davis, Agent of the United States Railroad Administration. Judgment for plaintiffs and defendant brings error. Affirmed.

C. O. Blake, W. R. Bleakmore, A. T. Boys, W. F. Collins, for Plaintiff in Error.

Suits & Hall, for Defendants in Error.

Commissioner's Opinion, Division No. 2

[fol. 187] Opinion by JARMAN, C.: This was an action in the District Court of Oklahoma County, by L. D. Alexander and Frank Griffith against James C. Davis, Agent of the United States Railroad Administration, having charge of the Chicago, Rock Island

and Pacific Railroad and the Chicago Rock Island & Gulf Railroad, to recover for loss and damage, sustained during Federal Control of railroads, to certain cattle shipped over said lines of road from Tucumcari, N. M., to Oklahoma City, Okla. The cause was tried to a jury and a verdict was rendered for the plaintiffs for $1,652.99 and judgment was entered accordingly, from which the defendant brings error.

The plaintiffs were engaged in the business of handling live stock and were contemplating shipping about 560 head of cattle to be placed on the market at Oklahoma City. These cattle were divided into two separate groups, one of which was at Roy, New Mexico and the other at Middlewater, New Mexico, the plaintiffs desired to ship these cattle to Oklahoma City without any delay on the road and with this in view, took the matter up with a Mr. Peterson, live stock agent for the C., R. I. & P. Railroad Co. at Amarillo, Texas, who advised the plaintiffs that he would have to take the matter up with the authorities of the road at El Reno, Oklahoma and that he would advise the plaintiffs when cars would be supplied and a train furnished to haul the cattle. In a few days Mr. Peterson notified the plaintiffs that the cars could be furnished for the shipment of the cattle on January 3, 1920, and on said date cars were furnished sufficient to take care of the cattle at Roy, New Mexico, which were loaded out and shipped to Oklahoma City but there were not enough cars to ship the cattle at Middlewater, New Mexico. These cattle at Middlewater, being 227 in number, were then driven to Campana, N. M., a town [fol. 188] located on the El Paso & S. W. Railroad, to be held until cars could be had for shipment of said cattle. The plaintiffs then took up with the Agent at Tucumcari, who was the joint agent at that point for the C., R. I. & P. and the E. P. & S. W. Railroads, the question of furnishing cars and hauling the cattle to Oklahoma City, and on January 6, 1920, said agent advised the plaintiffs that he would take the matter up with the authorities at El Reno, Oklahoma, and ascertain whether cars could be furnished for the shipment of these cattle and a special train furnished to haul them to Oklahoma City, and advised the plaintiffs further, that if they received notice from him to load the cattle that they would understand and know that the cattle could be hauled out immediately for Oklahoma City, and on the same date, said agent notified said plaintiffs to load the cattle, and cars were sent by said agent from Tucumcari to Campana for that purpose. The plaintiffs loaded the cattle on January 6th and they were hauled back to Tucumcari that evening at about 6:30, and the agent then advised the plaintiffs that the special train that was to be furnished to haul these cattle from Tucumcari had been annulled. The cattle were then held at Tucumcari until about 8:00 o'clock on the morning of January 7th, when they were hauled to Glenn Reo, which is on the state line between New Mexico and Texas, and arrived there about 9:30 on the morning of January 7th and were there unloaded, and again reloaded in the cars, and left Glenn Reo about sun down on the evening of January 9th and arrived at Amarillo, Texas, about 11:30 P. M. on January 9th and again unloaded, and left Ama-

rillo at midnight on January 10th, arriving at Oklahoma City on January 12th about 8:30 A. M.

The plaintiffs allege that the delay in the shipment of these cattle was unreasonable and by reason of said delay and of the rough treat-
[fol. 189] ment of the cattle during shipment, the plaintiffs suffered damages to the extent of $1,751.21.

The line of railroad from Tucumcari to Oklahoma City is a continuous line; from Tucumcari to Glenn Reo, which is on the state line between New Mexico and Texas, it is shown as the C. R. I. & P. R. R. and from Glenn Reo to Texola, which is on the state line between Texas and Oklahoma, it is known as the C. R. I. & G. Railroad, and from Texola to Oklahoma City it is known as the C. R. I. & P. Railroad, and these lines of railroad are known as the Rock Island lines, extending from Tucumcari, N. M. on the west to Memphis, Tennessee on the east.

This action was commenced in the District Court of Oklahoma County, Oklahoma on September 17, 1921, and on the same date summons was issued, which was served on September 20, 1921 on E. E. Blake, Service Agent of the defendant for the C. R. I. & P. R. R. Co.

The defendants contend that the C. R. I. & P. and the C. R. I. & G. railroads were taken over and operated, during the Federal Control by the United States Government, as separate and distinct entities and without any regard to the corporate relationship theretofore existing between said railroads; and that service of summons on the Service Agent of the C. R. I. & P. Railroad, under the provisions of the Transportation Act, 1920, gave the court jurisdiction of the defendant only, insofar as plaintiffs' cause of action concerned the operation of the C. R. I. & P. railroad.

The President of the United States, pursuant to the authority vested in him by Act, Aug. 29, 1916, took possession of and assumed control over the railroads of the country, including the C. R. I. & P. and the C. R. I. & G. Railroads. On December 28, 1917, the President, by proclamation, appointed William G. McAdoo as Director General of Railroads, and the railroads, after twelve o'clock mid-
[fol. 190] night on December 31, 1917, passed into the hands of and under the control of said Director General. In March 1918, an Act was passed (40 Stat. Pg. 451, c. 25), which provided that railroads, while under Federal Control, should be subject to all laws and liabilities as common carriers, whether arising under State or Federal laws or at common law; and that actions at law or suits in equity may be brought against such carriers and judgment rendered as then provided by law. Suits, then were brought against the railroads as defendants, but on October 28, 1918, the Director General issued General Order No. 50, which provided that all suits based on causes of action arising during Federal Control should be brought against William G. McAdoo, Director General of Railroads. On October 10, 1919, Walker D. Hines, was appointed as Director General of Railroads to succeed William G. McAdoo, resigned, and pursuant to authority vested in him, said Walker D. Hines, Director General, issued

General Order No. 50 A, which modified General Order No. 50 to the extent that suits based on causes of action arising during Federal Control should be brought against the Director General of Railroads, instead of the officer designated for that position.

Under Federal Control Act, March 21, 1918, provision was made for compensation to be paid to the owners of the railroads during the time that they should be held, controlled and operated by the Government for war time purposes. After the Government assumed control of the railroads, their owners had nothing further to do with the control of the railroads and were not responsible for any damages or loss sustained through the negligent operation of said roads, and no suit could be maintained against them, Hines v. Dahn, 267 Fed. 105; No. P. Ry. Co. v. Ault, 256 U. S. 1087, 65 L. Ed. 544.

[fol. 191] All of the railroads and systems of railroads of this country were taken over by the United States Government and operated under Federal Control as one grand national system of railroads and, for the operation of these roads, the United States was alone answerable. The only connection the owners of these various roads had with them, under Federal Control, was that they retained their ownership of said roads and were paid by the Government for the use thereof. Negligence in operation of said roads, was, in law, negligence of the Director General and an action for damages resulting from such negligence could be maintained against the Director General regardless of what railroad, in the operation of which negligence occurred, and without regard as to whether the railroads were related as parts of the same corporate system or that one was the agent or subsidiary line of the other, under corporate control.

In discussing this question, the court, in the case of Globe & Rutgers Fire Ins. Co. v. Hines, Agent, 273 Fed. 774, held:

"The Director General of Railroads, while operating the railroads under federal control assumed by the President under Act Aug. 29, 1916, and the Federal Control Act of March 21, 1918, (Comp. St. 1918, Comp. St. Ann. Supp. 1919,—3115¾ a-315¾ p.), operated the railroads as a single national system of transportation under a unified head or control, and not as separate companies or systems."

Therefore, if the plaintiffs, in this case, suffered damages by reason of the negligent acts of the Director General in the operation of the railroads under his supervision and control, then the plaintiffs could have maintained an action against the Director General as the head of the National system of railroads, for any damages suffered by them by reason of such negligent acts, regardless of what roads, in the operation of which, such negligent acts occurred and it is imma-

[fol. 192] terial whether the different roads, in the operation of which the negligent acts occurred, were related, affiliated or associated in any manner, in their corporate capacity. So the question as to whether the C. R. I. & G. Railroad, under its corporate management was a subsidiary company or an agent of the C. R. I. & P. R. R. is immaterial.

On March 1, 1920, Federal Control of the railroads ceased and

said roads were returned to their owners as provided by the Act of February 28, 1920, known as the "Transportation Act, 1920." Said Act provides and sets apart funds for the adjustment and settlement of all matters and disputes arising out of the possession, use or operation by the President of the railroads under Federal Control, of such character as prior to Federal Control could have been brought against such carrier, may, after the termination of Federal Control, be brought against the agent designated by the President for such purpose, who in this case is James C. Davis, the defendant; and provides that the suit may be brought in any court, which but for Federal Control, would have had jurisdiction of the cause of action had it arisen against such carrier; and also designates the manner in which service of process may be had on the Federal Agent.

Under the Transportation Act, 1920, an action against the Federal Agent of railroads for damages, suffered from the operation of railroads under Federal Control, is an action against the United States. Whalen Paper & Pulp Mills vs. Davis, 228 Fed. 438.

This suit is of such character as to authorize the action against the Federal Agent, under the provisions of the Transportation Act, 1920, and the District Court of Oklahoma County had jurisdiction to hear and determine such cause. It is conceded that process was [fol. 193] regularly served on the service agent of the C. R. I. & P. R. R. and that the court acquired jurisdiction of the defendant, the Federal Agent, insofar as the cause of action concerned the operation of the C. R. I. & P. R. R.; but it is contended that inasmuch as process was not served on the service agent or any officer of the C. R. I. & G. Railroad, that the court acquired no jurisdiction of the defendant as far as the plaintiffs' cause of action concerned the operation of the C. R. I. & P. Railroad. This petition is not tenable, for this is not an action against these several roads but is an action against the Federal Agent. Jurisdiction was acquired over the Federal Agent as to the entire cause of action when process was served on the service agent of the C. R. I. & P. Railroad. Certainly it would not be necessary to procure service on the service agents or officers of all the railroads over which a shipment was made in order to procure service on the Federal Agent and give the court jurisdiction of the cause.

The defendant assigns as error the giving of certain instructions and the refusing to give certain other instructions requested by the defendant. These instructions, for the most part, refer to and deal with the alleged relationship existing between the C. R. I. & P. and the C. R. I. & G. railroads. As heretofore indicated, it is immaterial as to the relationship existing between these roads and these instructions, complained of, merely placed an additional burden upon the plaintiffs and were not prejudicial to the rights of the defendant. No complaint is made as to the amount of damages awarded by the jury and the question of negligence and the measure of damages seem to have been properly submitted by the court in [fol. 194] instructions given, and the error of the court, in giving the instructions complained of and in refusing to give the instructions requested by the defendant, does not affect the substantial

rights of the defendant, and the same is harmless error, and will not be considered by this court. 2822 Comp. Stat. 1921.

The judgment of the trial court is, therefore, affirmed.

Lyons, C., and Estes, C., concur.

[fol. 195] SUPREME COURT OF OKLAHOMA

CLERK'S CERTIFICATE

I, Wm. M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing 196 pages, numbered from [A and B] and 1 to 194, inclusive, is a true and complete transcript of the record and all proceedings in the said Supreme Court of Oklahoma in the case of James C. Davis, Agent, etc., vs. L. D. Alexander, et al., Number 14237, as the same remains upon the files and records of said Supreme Court.

In testimony whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court, at the City of Oklahoma City, Oklahoma, this the 31st day of December, 1923.

Wm. M. Franklin, Clerk of Supreme Court of Oklahoma. by Reuel Haskell, Jr., Assistant. (Seal of the Supreme Court, State of Oklahoma.)

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1923

No. 785

JAMES C. DAVIS, Agent, etc., Petitioner,

vs.

L. D. ALEXANDER et al.

On Petition for Writ of Certiorari to the Supreme Court of the State of Oklahoma

ORDER ALLOWING PETITION FOR CERTIORARI—Filed June 2, 1924

On consideration of the petition for a writ of certiorari herein to the Supreme Court of the State of Oklahoma, and of the argument of counsel thereupon had,

It is now here ordered by this Court that the said petition be, and the same is hereby, granted, the record already on file as an exhibit to the petition to stand as a return to the writ.

June 2, 1924.

INDEX.

Petition for Writ of Certiorari, containing statement of case in Oklahoma trial and Supreme Court ---------- 1-9

Brief in Support of Petition---------- 10-15

List of Authorities Cited:

Missouri Pacific R. Co. v. Ault, 256 U. S. 554, ---------- 10

Grandquist v. Duluth, M. & N. Ry. Co., (Minn.) 193 N. W 120,---------- 12

Bostwick v. Director General of Railroads, (Mich.), 189 N. W. 907,---------- 12

Payne, Director Gen'l of Railroads v. Lynn, (Ohio.), 138 N. E. 336,---------- 12

Farr v. St. Louis, S. W Ry. Co. et al., (Ark), 243 S. W. 800,---------- 12

St Louis, B. & N. Ry. Co. v. McLean et al., (Tex.), 253 S. W. 248,---------- 12

Payne, Agent, etc., v. Lyon, (Ga.) 114 S. E. 892, ---------- ---------- 12

Davis v. Farmers Co-op. Equity Co., No. 270, Oct. term 1922, decided May 21, 1923,------ 12

Jaues C. Davis, Director Gen'l v. L. E. Benson, decided by Oklahoma State Supreme Court Dec. 4, 1923,---------- 12

Oregon, Washington Railroad & Nav. Co.,

J4384

v. McGinn, 258 U. S. 409,---------- 14

New York Life Ins. Co. v. Dunlevy, 241 U. S. 518, ---------- 15

In the Supreme Court of the United States

No. ------

JAMES C. DAVIS, Agent provided for by the Transportation Act, 1920, *Petitioner,*

vs.

L. D. ALEXANDER and FRANK GRIFFITH, *Respondents.*

PETITION FOR WRIT OF CERTIORARI

To the Honorable The Supreme Court of the United States:

Your petitioner, James C. Davis, Agent designated by the President, as provided by the Transportation Act, 1920, most respectfully represents and shows to this Honorable Court:

That in September, 1921 respondents, L. D. Alexander and Frank Griffith, brought suit in the District Court of Oklahoma County, State of Oklahoma, against "James C. Davis, Agent, United

States Railroad Administration, in charge of Chicago, Rock Island & Pacific Railroad and Chicago, Rock Island & Gulf Railroad, under Transportation Act of 1920", seeking recovery of damages alleged to have been suffered by them by reason of negligent delay and rough handling by the agents and servants of the Director General of Railroads in the transportation of certain cattle shipped by respondents from Campana, New Mexico to the stock yards at Oklahoma City, Oklahoma, over the El Paso & Southwestern Railroad, The Chicago, Rock Island and Gulf Railroad, and The Chicago, Rock Island and Pacific Railroad, and the Missouri, Kansas & Texas Railroad during Federal control. Service of process was had only upon the service agent of The Chicago, Rock Island and Pacific Railway Company at Oklahoma City, Oklahoma. No summons was ever served upon any agent or officer of The Chicago, Rock Island and Gulf Railway Company. It was a Texas corporation, a non-resident of the State of Oklahoma, and had no agent or officer in the State authorized by law to be served with process.

Upon the trial it was shown that The Chicago, Rock Island and Gulf and The Chicago, Rock Island and Pacific Railroads were the several properties of two separate and distinct corporations; that The Chicago, Rock Island and Gulf Railroad was owned by The Chicago, Rock Island and Gulf Railway Company, a Texas corporation, and was situate

wholly within that State; that the rails of the two roads connected at the Texas State line; that the railroad of The Chicago, Rock Island and Pacific Railway Company was wholly outside of the State of Texas. It was further shown that the major portion of the damages, for which recovery was sought, occurred in the State of Texas and on The Chicago Rock Island and Gulf Railroad.

Over objection of petitioner the trial court permitted to be introduced in evidence annual reports made to the Oklahoma Corporation Commission by The Chicago, Rock Island and Pacific Railway Company for the years 1919 and 1920, showing its ownership of the capital stock of The Chicago, Rock Island and Gulf Railway Company.

It was the contention of petitioner at the trial that the President took over and operated the physical properties of The Chicago, Rock Island and Gulf Railway Company and of The Chicago, Rock Island and Pacific Railway Company as separate and distinct entities; that service of process being had alone upon the service agent of The Chicago, Rock Island and Pacific Railway Company the court obtained jurisdiction of defendant, this petitioner, only in so far as the cause of action arose out of and concerned the operation of that railroad, and that he could not be held liable in this suit on a cause of action arising out of the operation of the Chicago, Rock Island and Gulf Railroad.

The trial court charged that "service of proc-

ess has been had upon The Chicago, Rock Island and Pacific Railway only", but over objection of petitioner submitted for the determination of the jury the question of whether the two railroads, as taken over and operated by the President during Federal control, constituted a single system, and charged that if they so found and against petitioner the verdict should include the loss and damage incurred upon The Chicago, Rock Island and Gulf Railroad, as well as that occasioned by The Chicago, Rock Island and Pacific Railroad.

A verdict was returned against your petitioner for the entire loss and damage occasioned by both Railroads, upon which judgment was rendered.

In due time petitioner appealed from said judgment to the Supreme Court of Oklahoma, where, by consideration of that Court, the judgment against him was affirmed on the 6th day of November, 1923.

In determining the question involved the State Supreme Court states and held:

> "This suit is of such character as to authorize the action against the Federal Agent, under the provisions of the Transportation Act, 1920, and the District Court of Oklahoma County had jurisdiction to hear and determine such cause. It is conceded that process was regularly served on the service agent of the C. R. I. & P. R. R. and that the court acquired jurisdiction of the defendant, the Federal Agent, insofar as the cause of action concerned the operation of the C. R. I. & P. R. R; but it is contended that in-

asmuch as process was not served on the service agent or any officer of the C. R. I. & G. Railroad, that the court acquired no jurisdiction of the defendant as far as the plaintiffs' cause of action concerned the operation of the C. R. I. & P. Railroad. This position is not tenable, for this is not an action against these several roads but is an action against the Federal Agent. Jurisdiction was acquired over the Federal Agent as to the entire cause of action when process was served on the service agent of the C. R. I. & P. Railroad. Certainly it would not be necessary to procure service on the service agents or officers of all the railroads over which a shipment was made in order to procure service on the Federal Agent and give the court jurisdiction of the cause.

"The Director General of Railroads, while operating the railroads under Federal Control assumed by the President under Act Aug. 29, 1916, and the Federal Control Act of March 21, 1918, (Comp. St. 1918, Comp. Stat. Ann. Supp. 1919,—3115 ¾ a-315 ¾ p.). operated the railroads as a single national system of transportation under a unified head or control, and not as separate companies or systems; and the Director General was responsible for damages sustained through the negligent operation of said railroads during Federal Control, regardless of what road or roads, in the operation of which, such negligence occurred, and without regard to the relation, affiliation or association of said roads in their corporate capacity.

"Under the Transportation Act, 1920,

an action against the Federal Agent of railroads for damages, suffered from the operation of railroads under Federal Control, is an action against the United States, and not against the railroads; and service of process, within the venue provided by Transportation Act, 1920, on the Service Agent for any of the railroads, gives jurisdiction over the Federal Agent as to all of the railroads, in the operation of which during Federal Control, the damages complained of resulted.

"Instructions given, which do not affect the substantial rights of a party, although erroneous, will be considered as harmless error, and will not be reviewed by the Supreme Court on appeal."

The Supreme Court of the State of Oklahoma is the highest court of that State and its said decision is final. Your petitioner respectfully represents that he has no right to a review of the decision of the Supreme Court of Oklahoma by this Honorable Court on appeal or by writ of error.

Accompanying this petition exhibited as a part thereof and filed with it is a duly certified transcript of the record and of all proceedings had in the trial court and the Supreme Court of the State of Oklahoma.

Your petitioner believes and, therefore, asserts that the final decision of the Supreme Court of the State of Oklahoma is against the rights, privileges

and immunities of your petitioner under the statutes of the United States, especially set up and claimed in that court, and is erroneous in the following particulars:

1. The State Supreme Court wrongfully decided that the President operated the roads of the Country during Federal control, not as entities, but as a single system, and that by virtue of the Transportation Act, 1920, in a suit for damages to live stock transported over several railroads where the cause of action arose out of the negligent operation of two such railroads, process served upon the service agent of one of such roads, a connecting carrier, was sufficient to give the court jurisdiction to render judgment against the Agent designated by the President for damage occurring on another of such railroads.

2. The State Supreme Court erred in failing to decide that service of process alone upon the service agent of The Chicago, Rock Island and Pacific Railway Company conferred upon the trial court jurisdiction of petitioner only in so far as the cause of action involved arose out of the operation of that particular railroad.

Accompanying this petition and under the same cover your petitioner presents a brief, calling attention to the authoritative decisions of this and other Courts upon which he relies.

WHEREFORE, petitioner respectfully prays

FEB 1 1924

In the Supreme Court of the United States

OCTOBER TERM, 1923

No. [redacted]32

ALDEN C. DAVIS, Agent appointed for by the Transportation Act, 1920, *Petitioner*,

vs.

L. D. ALEXANDER and FRANK GRIFFITH, *Respondents*.

PETITION FOR WRIT OF CERTIORARI

No. 366
January 19, 1924.
El Reno, Okla.

that a writ of certiorari be issued out of and under the seal of this Court directed to the Supreme Court of the State of Oklahoma commanding said court to duly certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and of all proceedings had in said Supreme Court of Oklahoma in this case, which was entitled in that court "James C. Davis, Agent, United States Railroad Administration, in charge of Chicago, Rock Island & Pacific Railroad and Chicago, Rock Island & Gulf Railroad, under Transportation Act of 1920, Plaintiff in Error, vs. L. D. Alexander and Frank Griffith, Defendants in Error. No. 14237", to the end that said cause may be reviewed and rightly determined in this Court as provided by law, and that your petitioner may have such relief in the premises as to this Court may seem appropriate, and that the said judgment of the Supreme Court of Oklahoma be reversed.

JAMES C. DAVIS,

Agent provided for by the Transportation Act, 1920.

By----------

C. O. Blake

W. R. Bleakmore

His Attorneys and Counsel.

State of Oklahoma,
Canadian County.

ss.

W. R. Bleakmore, being first duly sworn, upon his oath deposes and says. that he is one of the counsel for petitioner; that he prepared the above and foregoing petition for writ of certiorari; that he knows of the proceedings had therein referred to and that the allegations made and the matters and things set forth in said petition are true and correct as he verily believes.

W R Bleakmore

Subscribed and sworn to before me this 29 day of January, 1924

Arthur L March

Notary Public.

My Com. Ex. June 22 1925

In the Supreme Court of the United States

No. --------

JAMES C. DAVIS, Agent provided for by the Transportation Act, 1920, *Petitioner*,
vs.
L. D. ALEXANDER and FRANK GRIFFITH, *Respondents.*

Brief in Support of Petition for Certiorari

The final decision of the State Supreme Court is against the right of your petitioner under the Federal Control Act of March 21, 1918, c. 25, 40 Stat. at L. 451, and the Transportotion Act, 1920, 41 Stat. at L. c. 91, p. 456, especially set up and claimed by him in that court, in this: said court erroneously decided that during Federal control the railroads of the Country were operated as a single system and not as entities, and that by virtue of the Transportation Act, 1920 in a suit for damages to live stock transported over several railroads, where the cause of action arose out of the negligent operation of two of such roads, process served upon the service agent of one of such roads, a connecting carrier, was sufficient to give the court jurisdiction to render judgment against the Agent designated

by the President for loss and damage occurring on the other of such roads.

In support of this contention we cite *Missouri Pacific R. Co.* v. *Ault*, 256 U. S. 554, wherein this court said:

> "By the establishment of the Railroad Administration and subsequent orders of the Director General, the carrier companies were completely separated from the control and management of their systems. Managing officials were 'required to sever their relations with the particular companies and to become exclusive representatives of the United States Railroad Administration.' U. S. R. R. Adm. Bulletin No. 4, pp. 113, 114, 313. The railway employees were under its direction, and were in no way controlled by their former employers. See Bulletin No. 4, p. 168, §§ 5, 198 et seq., 330 et seq."
>
> "The President took over the physical properties, the transportation systems, and placed them under a single directing head; but he took them over as entities, and they were always dealt with as such (Bull. No. 4, p. 113). Each system was required to file its own tariffs. General Order No. 7, Null. 4, p. 151. Each was required to take an inventory of its materials and supplies. General Order No. 10, id. p. 170. Each Federal treasurer was to deal with the finances of a single system; his bank account was to be designated '(Name of Railroad), Federal Account.' General Order No. 37, id. p. 313.

Each of 165 systems was named individually in the order promulgating the wage awards of the Railroad Wage Commission. General Order No. 27, id. pp. 198, 200. And throughout the orders and circulars there are many such expressions as 'two or more railroads or boat lines under Federal Control.' See General Order No. 11, id. p. 170. It is this conception of a transportation system as an entity which dominates § 10 of the act. The systems are regarded much as ships are regarded in admiralty. They are dealt with as active, responsible parties, answerable for their own wrongs. But since levy or execution upon their property was precluded as inconsistent with the government's needs, the liability of the transportation system was to be enforced by allowing suit to be brought against whoever, as the party operating the same, was legally responsible under existing law, although it be the government."

To the same effect are:

Grandquist v *Duluth, M & N. Ry. Co.*, (Minn.) 193 N. W. 120,

Bostwick v. Director General of Railroads, (Mich.), 189 N. W. 907,

Payne, Director Gen'l of Railroads v. Lynn, (Ohio), 138 N. E. 336,

Farr v. *St. Louis, S. W. Ry. Co. et al*, (Ark.), 243 S. W. 800,

St. Louis, B. & N. Ry. Co. v. *McLean et al*, (Tex.), 253 S. W. 248,

Payne, Agent, etc. v. Lyon, (Ga.), 114 S. E. 892.

See also *Davis* v. *Farmers Co-op. Equity Co.*

No. 270, Oct. term 1922, decided by this Court May 21, 1923.

In a later case entitled *James C. Davis, Director General and Agent* v. *L. E. Benson,* involving the identical question presented in this case, the Oklahoma Supreme Court, on December 4, 1923, said:

> "The shipment passed over the A. T. & S. F. railroad from Clovis to Amarillo, the Rock Island system from Armarillo to Oklahoma City, the Texas end of which is called the C. R. I. and Gulf and the Oklahoma part, the C. R. I. & Pacific—the former name being used in Texas, because of Texas laws requiring separate incorporation in that state, and was delivered by a short line at Oklahoma City, called the 'Belt Line, which is operated by the Missouri, Kansas and Texas Railroad, all of these railroads being under government control and operation at the time.
>
> "The undisputed evidence is that the Rock Island & Gulf was an intermediate carrier and received the cattle at Amarillo and delivered to the Rock Island & Pacific at the Oklahoma-Texas line. All the injuries suffered by reason of delay, failure to bed the cars, unloading and holding over, were suffered at Amarillo, Texas, while on the Rock Island & Gulf.
>
> "While the railroads were taken over for one purpose and operated under one control, they were taken over as separate systems and dealt with as separate sys-

tems. By General Order No. 27 the Chicago, Rock Island and Pacific Railway and the Chicago, Rock Island and Gulf Railway were designated as separate systems and presented a situation 'analogous to that which would exist if there were a general receivership of each transportation system,' and the 'substantial legal rights of persons having dealings with carriers were not to be affected by the change of control.' Then, what of the rights of the shipper, whose legal rights were not affected by the change of control? In such circumstances, in the absence of Federal Control, he couldn't recover against one system for damages suffered on another system. C. R. I. & P. Ry. Co. et al., 1 Harrington, et al., 44 Okla. 41, Oregon, Washington R. R. & Navigation Co. v. McGuinn, 258 U. S. 66, L. E. 489.

"Prior to Federal Control recovery could not be had against one railroad company for injuries suffered on the road of another railroad company, and such right has not been given either by Act of Congress, proclamation of the President or order of the Director General. Accepting the law as laid down by the Supreme Court of the United States in the Ault case, and applying it to the facts of this case, the conclusion is irresistible that the plaintiff cannot recover against the Director General in charge of the Chicago, Rock Island and Pacific Railroad for injuries suffered on the Chicago, Rock Island and Gulf Railroad."

See also *Oregon, Washington Railroad & Navigation Co.* v. *McGinn,* 258 U. S. 409.

The Chicago, Rock Island and Gulf Railway Company, a Texas corporation, was the carrier operating the Chicago, Rock Island and Gulf railroad. It was not doing business in Oklahoma, and had no service agent in that State. Process was not served upon any agent or officer of that carrier, as required by the provisions of Sec. 206 (b) Transportation Act, 1920; and, therefore, petitioner not having submitted to its jurisdiction, the state court was without authority to render judgment against him for damages caused by the operation of that road.

> "The established general rule is that any personal judgment which a state court may render against one who did not voluntarily submit to its jurisdiction, and who is not a citizen of the State, not served with process within its borders, no matter what the mode of service, is void, because the court has no jurisdiction over his person."
>
> *New York Life Ins. Co.* v. *Dunlevy,* 241 U. S. 518.

It is most respectfully urged that the writ of certiorari issue; and upon review of the proceedings

the decision of the Supreme Court of Oklahoma be reversed.

C. O. Blake

W. R. Bleakmore

Attorneys for Petitioner.

We, the undersigned, counsel for the above named respondents, L. D. Alexander and Frank Griffith, hereby acknowledge service of notice of the date of submission of the foregoing petition for writ of certiorari to the Supreme Court of the United States, on, to-wit, the 4th day of February, A. D. 1924, and receipt of a copy of said petition and brief in support thereof.

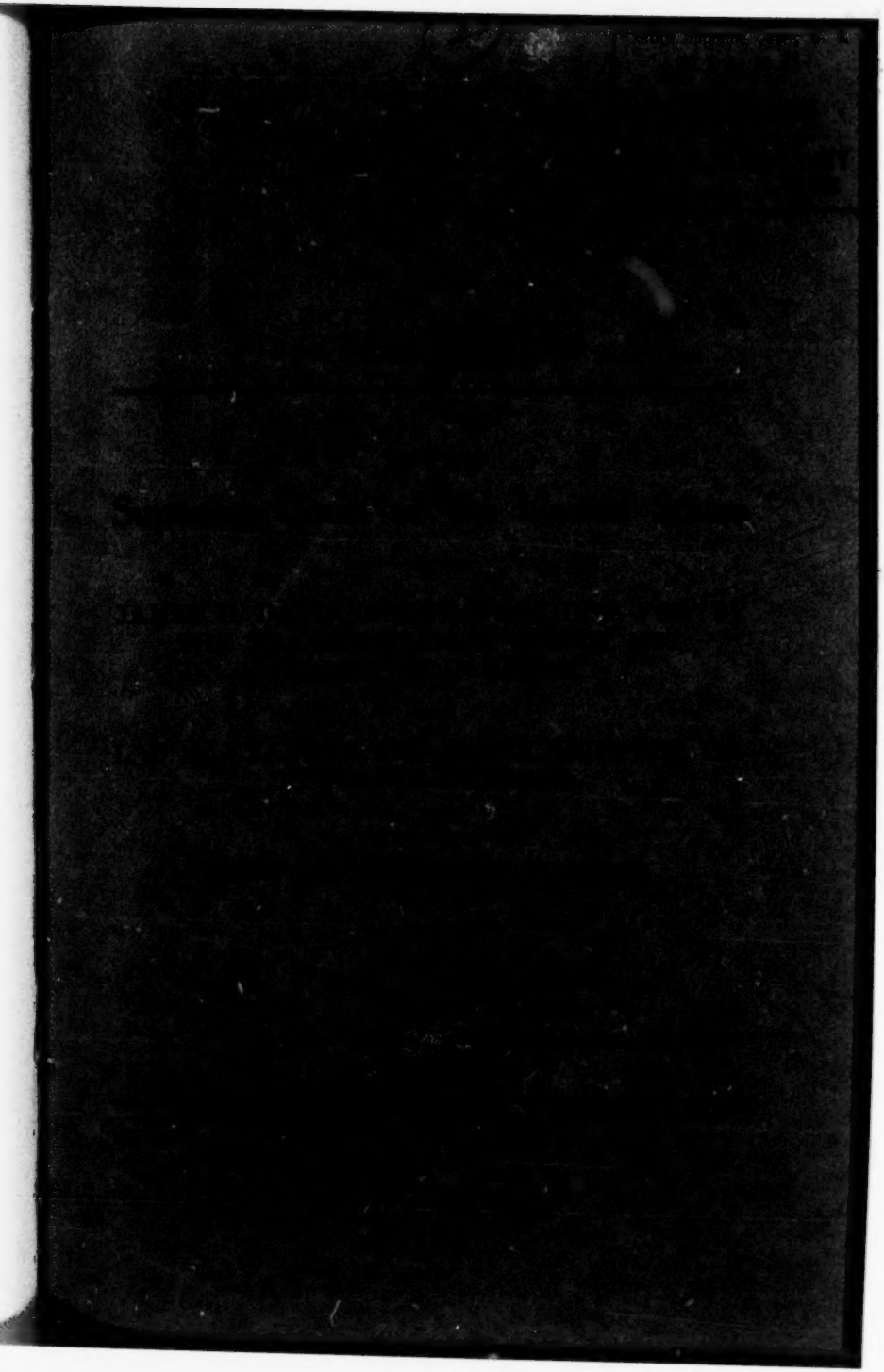
Dated this 21st day of January, A. D. 1924.

Fred E. Suits

C. E. Hall

Counsel for Respondents

L. D. Alexander and Frank Griffith,



SUBJECT INDEX.

	Page
STATEMENT OF THE CASE	1- 2
EVIDENCE	2-20
Grover B. Hill	3- 5
E. H. Johnson	5
Frank Griffith	6- 8
W. E. Grimes	8-18
H. L. Reed	19-20
BRIEF AND ARGUMENT	21
Dominant carrier liable for negligence of subordinate carrier	21-29
Exhibit K (Rock Island Time-Table)	29-30
Annual Reports, C. R. I. & P. Ry. Co.	31
Federal Control Act:	
Section 10	41
Section 15	41
Gulf Lines are part of Rock Island System	30
Through tickets sold	31
Same train crews operate trains	39
Amarillo dispatcher directs movement of trains in New Mexico, Texas and Oklahoma	38
J. E. Gorman, President of Chicago, Rock Island & Pacific Railway Company	30, 38
J. E. Gorman, President of Chicago, Rock Island & Gulf Railway Company	30, 38
Mr. Warner, Vice-President, Chicago, Rock Island & Gulf	30, 38
Mr. Warner, Manager, Second District of Chicago, Rock Island & Pacific Railway Company	30, 38
Live stock agent at Amarillo receives authority from dispatcher at El Reno	39
CONCLUSION	52

CASE INDEX.

Page

Block vs. Fitchburg R. Co., 139 Mass. 308, 1 N. E. 348 ---------- 27
Bradford vs. So. Car. R. Co., 7 Rich. Law 201, 62 Am. Dec. 411 ---------- 27
Barter vs. Wheeler, 49 N. H. 9, 6 Am. Rep. 434--- 27
Cincinnati R. Co. vs. Spratt, 2 Duv. (Ky.) 4----- 27
33 Cyc. 697 ----------22, 25, 29
Davis, Federal Agent of Railroads vs. Alexander, 93 Okla. 152, 220 Pac. 358 ---------- 2
Davis, Federal Agent of Railroads, vs. Benson, 105 Okla. 41, 231 Pac. 536---------- 21
Davis, Director General vs. Griffith, 106 Okla. 1, 230 Pac. 262 ---------- 51
Dahn vs. Davis, 258 U. S. 421, 42 S. Ct. 320, 66 L. ed. 696 ---------- 51
Harris vs. Cheshire R. Co. (R. I.), 16 Atl. 512---- 27
Independence Mills Co. vs. Burlington, etc. R. Co., 72 Iowa 535, 34 N. W. 320, 2 Am.St. Rep. 258 ---------- 27
Joseph R. Foard Co. vs. State of Maryland, 219 Fed. 827, 135 C. C. A. 497---------- 43
Lehigh Valley Ry. Co. vs. Dupont, 128 Fed. 840, 64 C. C. A. 478----------22, 25
Lehigh Valley Ry. Co. vs. Delachesa, 145 Fed. 617, 76 C. C. A. 307----------22, 28
Luckenbach S. S. Co., Inc., et al., vs. W. R. Grace & Co., Circuit Court of Appeals, Fourth Circuit, 267 Fed. 676----------44- 45
Missouri Pacific R. Co. vs. Ault, 256 U. S. 554, 65 L. ed. 1087 ----------37, 40
New York, N. H. & H. R. Co. vs. Interstate Commerce Commission, 200 U. S. 363, 50 L. ed. 515, 26 Sup. Ct. Rep. 272---------- 50

Page

Pennsylvania R. Co. vs. Jones, 155 U. S. 333, 15 Sup. Ct. 136, 39 L. ed. 176 ---------- 27
Philadelphia, etc. R. Co. vs. State, 58 Md. 372 ---- 27
St. Louis-S. F. R. Co. vs. Sanford, 54 Okla. 185, 153 Pac. 650 ---------- 22
Swift vs. Pacific Mail Steamship Co., 106 N. Y. 206, 12 N. E. 583 ---------- 27
So. Pac. Terminal Co. vs. Int. Comm. Com'n., 219 U. S. 523, 31 Sup. Ct. 279, 55 L. ed. 310 ------ 43
The Willem Van Driel, Sr., 252 Fed. 35 --------43- 44
United States vs. Lehigh Valley R. Co., 220 U. S. 257, 273, 55 L. ed. 458, 463, 31 Sup Ct. Rep. 387 ---------- 49
United States vs. Del., Lack. & West. R. R., 238 U. S. 516, 35 Sup. Ct. 873, 59 L. ed. 1438 -----49- 50
Wichita Falls & N. W. Ry. Co. vs. Puckett, 53 Okla. 463, 157 Pac. 112 ----------22, 33, 38
Wyman vs. Chicago, etc R. Co., 4 Mo. App. 578 --- 27

No. 274

IN THE

Supreme Court of the United States

JAMES C. DAVIS, AGENT, PROVIDED FOR BY THE TRANSPORTATION ACT OF 1920, PLAINTIFF IN ERROR,

vs.

L. D. ALEXANDER AND FRANK GRIFFITH, DEFENDANTS IN ERROR.

BRIEF OF DEFENDANTS IN ERROR.

Statement of the Case.

This action was filed by L. D. Alexander and Frank Griffith against James C. Davis, Agent, United States Railroad Administration, in charge of the Chicago, Rock Island & Pacific Railroad and Chicago, Rock Island & Gulf Railroad, under the Transportation Act of 1920, in the District Court of Oklahoma County, State of Oklahoma, to recover damages for delay and rough handling to a shipment of live stock moving from Campana, New Mexico, to Oklahoma City, Oklahoma, in the sum of $1751.21; said shipment consisted of 227 head of

fat cattle and were loaded on the evening of January 6, 1920, and delivered to the terminal line at Oklahoma City at 8:15 a. m. on Jan. 12, 1920. Said cause was tried to a jury and a verdict rendered in favor of defendants in error, plaintiffs below, in the sum of $1655.99. An appeal was prosecuted to the Supreme Court of Oklahoma to reverse the judgment entered upon said verdict. The judgment of the trial court was affirmed (93 Okla. 159, 220 Pac 358).

This appeal is being prosecuted to reverse the judgment of the Supreme Court of Oklahoma, and in order that said cause may be reviewed and rightly determined in this Court.

The petition filed in the trial court will be found in the transcript of record between pages 2 and 6, inclusive, and the answer to said petition upon pages 9 and 10.

Evidence.

Grover B. Hill testified, in substance (R. 12-26) that he is in the live stock brokerage business, at Amarillo, Texas, and that in the months of December, 1919, and January, 1920, he sold to Frank Griffith, one of the plaintiffs, two bunches of cattle located southeast of Roy, New Mexico; that one bunch was delivered to Mr. Griffith at

Roy, New Mexico, January 3, and the other one delivered three days later, at Campana, New Mexico; that he was ready to deliver all of them on January 3 but they could not get enough cars. The second bunch was delivered at Campana on January 6. They were dry fat cows, in good condition; that there were two hundred twenty-seven delivered at Campana; that he made all arrangements for loading the cattle at Campana, which station is located on the El Paso & Southwestern, a part of the Rock Island system; that before loading the cattle at Campana he went to Tucumcari to see the joint agent for the Chicago, Rock Island & Pacific Railway Company and the El Paso & Southwestern, but the agent stated he would have to take it up with the authorities at El Reno, Oklahoma; that when the time came for the train to go up to Campana on the morning of January 6, the agent at Tucumcari told him to go on the train and he would send word up in a little while as to whether the cattle could be loaded that day. In a short time he sent a message up by a brakeman, written on a piece of telegraph blank, or yellow paper, stating it would be all right to go ahead and load the cattle, and the message was signed by Mr. Dever; that he thought nothing more of it and threw the message away; that they

loaded the cattle about 6:30 or 7:00 o'clock, and when the train got back to Tucumcari it was dark; that he went to the depot to see the agent and sign up the necessary papers and was informed that the train had been annulled and he could not get out until 7:30 the next morning; that he advised them not to unload the cattle because it would take half the night to unload and reload them, and he figured it would be harder on them than to leave them standing in the cars (R. 26); that he got out of Tucumcari next morning about 7:30 or 8:00 o'clock, and the train went about nineteen miles and stopped at Glen Rio; that they stayed at Glen Rio from 9:30 that morning, January 7, until 6:30 p. m., on January 9; that after getting out of Glen Rio at about 6:30 p. m. he arrived at Amarillo about 11:30 p. m., where the cattle were again unloaded; the distance from Glen Rio to Amarillo being about seventy miles; that the cattle remained in Amarillo twenty-four hours; that the usual and customary time for the transportation of cattle from Tucumcari, New Mexico, to Oklahoma City, Oklahoma, is less than thirty-six hours; that the usual and ordinary shrink on a shipment of cattle such as belonged to the plaintiffs on a thirty-six hour run is about forty or fifty pounds; that the excess shrink over and above the normal shrink upon this shipment he esti-

mated to be sixty pounds per head; that handling cattle in the way in which plaintiff's cattle were handled materially affects their appearance upon the market, at least twenty-five to thirty cents per hundred weight; that he saw the cattle at Amarillo the next morning and they were badly shrunk and drawn.

On cross-examination (R. 20), witness testified that the joint agent of the Chicago, Rock Island & Pacific Railway Company and the El Paso & Southwestern Railway Company, at Tucumcari, told him, "If I tell you to load those cattle, we will haul them out;" that said cattle lost about sixty pounds more than they ordinarily would have if handled in the usual and customary way (R. 23).

E. H. Johnson testified, in substance (R. 26-29), that he is in the commission business at the Oklahoma City stock yards; that he sold the shipment of cattle belonging to Frank Griffith in the yards at Oklahoma City, and the cattle were bruised and awful gaunt and never took hardly any fill; that their appearance would cause them to bring six bits to a dollar a hundred less than they would have; that they were sold to the packers; that being handled in the manner in which they were he figures that they lost in excess shrink anywhere from sixty to seventy-five pounds per head over and above the normal shrink.

FRANK GRIFFITH, plaintiff, testified, in substance (R. 29-51), that he has been buying and selling cattle for about twenty-five years and shipping to the Oklahoma City market; that in December, 1919, and January, 1920, he bought a herd of cattle near Roy and Middlewater, New Mexico; that the purchase was made through Grover B. Hill; that before purchasing said herd of cattle he took the matter up with Mr. Peterson, the live stock agent for the Rock Island, at Amarillo, Texas, who advised that he would secure the necessary cars for him; that after being assured that the cars would be furnished, he purchased the cattle; that in his arrangements with Mr. Peterson, he stated that he would have to take it up with El Reno, Oklahoma, before he could make and definite promise and after that he told Mr. Peterson when he would want the cars, and he replied that he would have them there; that he agreed to have enough cars so that both bunches of cattle could be loaded, one at Roy, New Mexico, and the other at Middlewater, New Mexico, on January 3, and consolidated at Tucumcari; that only enough cars were furnished to take care of the cattle at Roy, New Mexico, on January 3; that the other shipment reached Oklahoma City on January 12; that they were in bad condition, being badly shrunk, drawn and bruised, the cat-

tle being jammed and covered with bruises, and kept on the road for a long time, and being jaded and fagged hurts them from a packer's standpoint anywhere from twenty-five cents to two or three dollars per hundred weight.

That said shipment of cattle being on the road for the length of time it was would shrink from sixty to seventy-five pounds per head over and above the normal shrink; that he was required to pay $79.40 at Glen Rio, New Mexico, for feed, aside from $24.00 worth of feed given the cattle in the yards.

That he has been to Tucumcari, New Mexico, a good many times; that the train crews run from Tucumcari into Amarillo, Texas, without any change; that between Amarillo, Texas, and Oklahoma City the train crews change at Sayre, Oklahoma, and El Reno, too, he thinks; that there is no change made at the state line between New Mexico and Texas; nor any change made at the state line between Texas and Oklahoma; that the line of railroad between Tucumcari and the Texas line is known as the Chicago, Rock Island & Pacific Railway Company's line; that is the name it goes under; that Glen Rio is on the line between New Mexico and Texas; that the line of railroad between Glen Rio through the Texas Panhandle is known as the Chicago, Rock Island

& Gulf Railway Company's line, and from the Texas-Oklahoma boundary line east it is known as the Chicago, Rock Island & Pacific Railway Company's line; that in all his dealings with Mr. Peterson, the live stock agent at Amarillo, Texas, he always stated that he would have to take it up with the dispatcher at El Reno before he could give him an answer.

The following is the entire direct examination of W. E. Grimes, a witness on behalf of plaintiff (R. 51):

"By Mr. Suits (Attorney for plaintiffs):

Q. State your name?

A. William E. Grimes.

Q. What position, Mr. Grimes, do you occupy with the State of Oklahoma?

A. Auditor Corporation Commission.

Q. As auditor of the Corporation Commission, do you have in your department and under your jurisdiction the reports filed by the Chicago, Rock Island & Pacific Railway Company?

A. Yes, sir.

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Defendant excepts.

Q. Is each railroad company doing business in the State of Oklahoma required to file annual report with the Corporation Commission?

A. Yes, sir.

Q. Showing mileage operated and various lines controlled by it?

A. Yes, sir.

Q. The ownership of its subsidiary lines?

A. Yes, sir.

Q. Do you have the report of the Chicago, Rock Island & Pacific Railway Company for the year 1919 (R. 51)?

A. Yes, sir; for the year ending December 31, 1919.

Q. What does that report show, Mr. Grimes, with respect to the ownership of the Chicago, Rock Island & Gulf Railway Company?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Note our exception.

A. It shows, on page 214, item 7, column J, that the control represents 100 per cent.

Q. What is that report, 100 per cent of what?

A. I understand it to mean 100 per cent of the—

Mr. Bleakmore: Object to what he understands it to be.

The Court: If he knows, he can state.

A. (Continued): That is line 7, page 214, Schedule 218, of the Rock Island Lines, Annual Report of the Chicago, Rock Island & Pacific Railway Company, filed with the Corporation

Commission of the State of Oklahoma, for the period ending December 31, 1919.

Mr. Bleakmore: Move to exclude the answer, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. Check that over and read it, so we will have it in the record (R. 52).

A. Well, under the heading 'Line Number' is '7;' 'Line Reference Number: E;' Class Number ——; 'Name of Issuing Company and Description of Security Held'—that is the heading—'C. R. I. & G. R'y. Company—The;' 'Pledged'—under the sub-head 'Par value of amount held at close of year' '468,200.00;' 'Book value at close of year—$468,200.00;' 'Unpledged,' under sub-head 'Par value of amount held at close of year' $800.00; 'Book value at close of year'—800.00; 'Extent of Control—100 per cent.

Mr. Bleakmore: Defendant moves to exclude the answer of the witness, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. You describe this as being Schedule 218? Will you please state what the title of that schedule is?

A. 'Investments in securities of carrier companies affiliated with respondent.'

Q. What you have just read to the stenographer

comes from the Annual Report of The Chicago, Rock Island & Pacific Railway Company?

A. Yes, sir.

Mr. Bleakmore: Object, and move to exclude the answer.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. Do you have the annual report of that same company for the year 1920?

A. Yes, sir (R. 53).

Q. I wish you would turn to that report.

A. I also have what is designated here as the '40th Annual Report of The Chicago, Rock Island & Pacific Railway Company and Proprietory Companies for The Fiscal Year Ending December 31, 1919.'

Mr. Bleakmore: Move to exclude the last answer of the witness, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. Mr. Grimes, what does that report show with respect to the control of The Chicago, Rock Island & Gulf Railway?

Mr. Bleakmore: Objected to as incompetent, irrelevent and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

A. It shows the railroads operated by the C. R. I. & P. Railroad Company, under the name of 'Rock Island Lines.'

Q. On what page?

A. Page 60; but this here refers to the title page —to the first page—for emphasis.

Q. I wish you would read the title page of this 40th Annual Report of The Chicago, Rock Island & Pacific Railway Company?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception (R. 53).

A. '40th Annual Report of The Chicago, Rock Island & Pacific Railway Company and Proprietory Companies, Fiscal Year Ending December 3, 1919. This Report Embraces the Affairs of the Corporation and Results from Operation by The United States Railroad Administration for the Entire Year. Presented in a Consolidated Form with the view of continuing the historical and statistical records of the Company, thus affording comparison with the data in preceding annual reports.' Now, on page 60, under the head of 'Mileage Operated December 31, 1919,' under the heading of 'The Chicago, Rock Island & Gulf Railway'—'Main Line, Texola, Oklahoma (Texas-State-Line) to Texas-New Mexico State Line near Glen Reo, Texas. Miles first main track, 182.90. Miles of yard tracks and siding—22.98.' That is under the heading 'Rock Island Lines.' Mileage operated December 31, 1919,' and shows that that portion of the Texas lines was operated by the Rock Island Lines at that time.

Mr. Bleakmore: Comes now the defendant and

moves to exclude the last answer of the witness, as incompetent, irrelevant and immaterial, and calling for the conclusion of the witness.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. Do you have the report filed by The Chicago, Rock Island & Pacific Railway Company with the Corporation Commission of Oklahoma for the year ending December 31, 1920?

A. Yes, sir (R. 54).

Q. What does that report show with respect to the ownership of The Chicago, Rock Island & Gulf Company?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Note an exception.

A. Why, identically the same—'Declaration of Interests,' same page and under the same schedule number as that shown in the report for 1919.

Q. All the way through?

A. All the way through, yes, sir.

Q. I think, in order to be on the safe side, we had better ask you to introduce or offer in evidence 'Schedule 218. Investment in Securities of Carrier Companies Affiliated with Respondent.'

Mr. Bleakmore: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. Line 7?

A. You want to read this into the record?

Q. Yes.

A. Heading is '218'—that is the schedule number. 'Investment in Securities of Carrier Companies Affiliated with Respondent.' 'Line Number 6.'

Q. Is that 6 or 7?

A. It is 6 in this one. Under the head of 'Name of Issuing Company and Description of Security Held' is 'C., R. I. & G. Railway Company—The.' Under the head of 'Par Value of Amount Held at Close of Year '468,200.00.' 'Book Value at Close of Year—$468,200.00' (R. 55).

Q. That is under 'Unpledged,' is it not?

A. Yes; 'Unpledged' and sub-head 'Amount Held, etc'—$800.00.' Under the sub-head 'Book Value Close of the Year— $800.00.' Extent of Control—100 per cent.'

Q. Is that all in that report, Mr. Grimes?

A. Yes, sir; that's all there is on that line.

Mr. Bleakmore: Move to exclude the last answer of the witness, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Note our exception.

Q. Is there anything else in that report, Mr. Grimes?

A. Why, I think nothing else.

Mr. Suits: We now offer in evidence the line read

by the witness from the Report of 1920—Annual Report.

Mr. Bleakmore: Object to it, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Mr. Suits: And also the line read from the 1919 Report of the Corporation Commission.

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: *Exception.*

(A true copy of the matter above offered is as read into the record by the witness) (R. 55).

Q. (Handing paper to witness): Please state what that is, Mr. Grimes?

A. Report of The Chicago, Rock Island & Pacific Railway Company and Subsidiary Lines, Fiscal Year Ending December 31, 1920.

Q. Does that show the leased lines and the lines operated by the Chicago, Rock Island & Pacific Railway Company?

A. Yes, sir. Its own declaration on the title sheet is 'This report embraces the affairs of the corporation and the results from operation of the lines during January and February, 1920, by the United States Railroad Administration and for the balance of the year by the corporation, presented in a consolidated form with the view of continuing the historical and statistical records of the Company, thus affording comparison with the data in preceeding annual reports.'

Mr. Bleakmore: Move to exclude all this, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. What does that report show with respect to the operation of the line of railway known as Chicago, Rock Island & Gulf Railway?

Mr. Bleakmore: Object to that, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Note our exception.

A. It shows, page 61, under the head 'Rock Island Lines.' 'Mileage operated December 31, 1920,' under the sub-head 'Chicago, Rock Island & Gulf Railway' 'Texola, Oklahoma (Texas State Line) to Texas New Mexico state line near Glen Rio, Texas, Mileage (R. 56): First main track, 182.90. Miles of other tracks and sidings, 23.10.'

Mr. Suits: We offer in evidence the statement read by the witness to the court reporter as to the operation of the Chicago, Rock Island & Gulf Railway Company lines, and also the title page of this 41st Annual Report.

Mr. Bleakmore: Object to it, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Mr. Suits: That's all. Take the witness'' (R. 56).

This witness on cross-examination testified (R. 56-57) as follows:

"Q. Do you know whether or not the Chicago, Rock Island & Pacific Railway Company in the years 1919 and 1920 owned the majority of the stock of the Chicago, Rock Island & Gulf Railway Company?

A. Personally, I know that it did, but I don't know that—

Q. You know that it did?

A. Yes, sir.

Q. How do you know it did?

A. Why, by familiarity with them—I have been in the railroad business in Texas about 20 years, and my relations were such that I knew it from my dealings and transactions, they advised me that much.

Q. With the Gulf Railway Company?

A. Yes, sir.

Q. How many shares of stock were issued by that company?

A. I don't know. I just know that the C., R. I. & P. only stands for a legal excuse for the existence of the Gulf so as to comply with the Texas laws as far as it can by maintaining a separate entity down in Texas.

Q. You do know, as a matter of fact, that it is a separate corporation in the State of Texas, do you not?

A. Yes, sir.

Q. And you know, as a matter of fact, that under

the laws of the State of Texas the C., R. I. & P. cannot operate a road in the State of Texas, don't you?

A. Well, it does do it through its agents down there in Texas.

Q. It does it through its agents?

A. Yes, sir.

Q. In other words, you know, as a matter of fact, the the Chicago, Rock Island & Pacific Railway Company is constantly violating the constitutional provision of the State of Texas in operating its road there, do you?

A. Yes, sir.

Q. You do?

A. Yes, sir.

Q. How do you know it? Tell the court.

A. Well, I know when I was claim adjuster down there for the M., K. & T. and that with the Rock Island we made an agreement with the adjuster of the C., R. I. & P. with reference to settling grain claims on shipments of grain originating in Chicago and concealed list issued to me and that was supposed to be binding, but his superior in Chicago repudiated it, and he admitted he had instructions from Chicago and they fired that man over it.

Q. You were claim adjuster down in Texas?

A. Yes, sir.

Q. And you got all this information as a claim adjuster on some other railroad?

A. Yes, sir."

H. L. Reed (R. 63-65), general superintendent of the Chicago, Rock Island & Pacific Railway Company, residing at El Reno, Oklahoma, testified, in substance (R. 63-65) on cross-examination, that his jurisdiction covers all the Rock Island lines in New Mexico, Tennessee, Louisiana, Arkansas, Oklahoma and a part of the lines in Missouri and Kansas; that a train starting from Tucumcari, New Mexico, for Oklahoma City, comes over the main line of the Rock Island in the Panhandle of Texas; that no change is made at either of the state lones, New Mexico or Oklahoma boundary lines; that the reports which he referred to in his direct examination are not made under his supervision or within his jurisdiction; that all of the trains in Texas are handled from Amarillo, including some in Oklahoma, as far as Sayre, and the dispatcher at Amarillo handles trains to Tucumcari, New Mexico; that trains run through from Oklahoma City to Amarillo and Tucumcari, and tickets are sold through to those stations; that the Chicago, Rock Island & Gulf is a part of the Rock Island system.

Witness identified Exhibit K (R. 58-9), being an official time table gotten out by the Rock Island system, and stated that it was issued by the Rock Island.

Witness identified Time Table No. 50, showing a list of stations between Memphis, Tennessee, and Tucumcari, New Mexico.

Witness also identified Official Guide of Railroads of the United States, and stated that it was recognized by all railroads as being correct, the information being furnished by the railroads (R. 63).

Page 803 of said Official Guide was exhibited to the witness, which contained a list of the Rock Island lines and the names of the officers. From the Official Guide the witness stated that Mr. J. E. Gorman was president of the Chicago, Rock Island & Pacific Railway Company and also president of the Chicago, Rock Island & Gulf Railway Company. Mr. Warner was manager of the second district of the Chicago, Rock Island & Pacific Railway Company, with headquarters at El Reno, Oklahoma. The second district of the Chicago, Rock Island & Pacific Railway Company comprises all the lines in Texas, Tennessee, Louisiana, Arkansas, Oklahoma, New Mexico and part of the lines in Kansas and Missouri; that Mr. Warner is also vice-president of the Chicago, Rock Island & Gulf Railway Company, with headquarters at El Reno for that company; that among the lines in Texas, which are a portion of Mr. Warner's jurisdiction in the second district, are the Chicago, Rock Island & Gulf lines.

BRIEF AND ARGUMENT.

The opinion of the Supreme Court of Oklahoma (93 Okla. 159, 220 Pac. 358), affirming the judgment in this case, will be found in the transcript of record commencing at page 103 and ending on page 108. This opinion has since been overruled by the Supreme Court of Oklahoma in *Davis, Federal Agent of Railroads* v. *Benson,* 105 Okla. 41, 231 Pac. 536. At the time the opinion was written by one of the divisions of the Supreme Court Commissioners the questions raised in the briefs of both plaintiff and defendant were completely ignored, and the judgment of the trial court affirmed upon reasons which were clearly erroneous and which were not discussed in the brief of either party to the case.

The principle under which we contend that the judgment of the trial court should be affirmed is as follows:

"Where one railroad company actually controls others through the ownership of their stock and operates all of the lines as a single system, although the general management of each road is retained by the company owning it, the dominant company will be liable for injuries due to the negligence of one of the subordinate companies."

This principle is supported by the following authorities:

33 Cyc. 697.

St. Louis-S. F. R. Co. v. *Sanford,* 54 Okla. 185, 153 Pac. 650.

Wichita Falls & N. W. Ry. Co. v. *Puckett,* 53 Okla. 463, 157 Pac. 112.

Lehigh Valley Ry. Co. v. *Dupont,* 128 Fed. 840, 64 C. C. A. 478.

Lehigh Valley Ry. Co. v. *Delachesa,* 145 Fed. 617, 76 C. C. A. 307.

Davis, Director General v. *Griffith,* 106 Okla. 1, 230 Pac. 262.

In *St. Louis-S. F. R. Co.* v. *Sanford, supra,* it was held:

> "One railroad company does not become liable for the negligence of another merely by reason of being a stockholder in the corporation guilty of the negligent act, *but where one company actually controls another, and operates its line of road as a single system, and sells tickets at the stations of the subordinate line over its system, the dominant company will be liable for injuries suffered by a passenger due to the negligence of the subordinate, although the subordinate company keeps up its corporate organization.*"

Also, the same proposition was considered and passed upon in the case of *Wichita Falls & N. W. Ry. Co.* v. *Puckett,* in which it was held:

> "Where two railway companies are incorporated under the laws of different states, but their tracks connect at the state line, and together form a continuous line of railway extending into both states, and said companies use the same headquarters,

roundhouses, and switch yards, and have the same managing and operating officers, and employ and use the same engineers and train crews, and use indiscriminately each other's engines, cars, and trains and jointly operate through trains and train crews over both lines of road, and sell continuous tickets and carry passengers over both roads, and deposit the earnings of both companies in one common fund received, kept and disbursed by a common auditor of both companies, and from which common fund the employees and expenses of both companies are paid, and the joint earnings and expenses are respectively credited and charged to each company in proportion to mileage owned by it of the aggregate contiguous lines of railway in the two states, and the same common managing officer of both companies, and all of whom may be required to work on either company's line of railroad, held in such case, an engineer so employed and controlled who is injured by the negligence of one or both of such railway companies, while doing the work of both, may sue one or both companies in the courts of either state, and recover his damages, provided he is otherwise entitled to damages."

In the first case cited above, the plaintiff Sanford was injured at Vernon, Texas, at the station of the St. Louis, San Francisco & Texas Railway Company, a Texas corporation. She instituted suit in the District Court of Oklahoma County against St. Louis & San Francisco Railway Company, a Missouri corporation. The defendant in that case introduced evidence to the effect that Vernon, Texas, where the injury occured, was on the line of the St. Louis, San Francisco & Texas

Railway Company, a separate and distinct corporation from the one sued. The charter of that corporation was introduced in evidence, showing it to be a Texas corporation, and empowered to build and operate a railroad within the State of Texas. There was evidence that the Texas corporation had a secretary and treasurer who were not employes of the Missouri corporation and had no connection with it. There was also evidence that the same crews operated trains from Hobart, Oklahoma, over the line of the Missouri corporation in Oklahoma to the Red River, the boundary line between Oklahoma and Texas, and thence over the road of the Texas company into Vernon, Texas, and that they were paid in proportion to the mileage by the Texas corporation and the Missouri corporation. The plaintiff, Sanford, introduced the annual report of the Missouri corporation filed with the Corporation Commission of Oklahoma, which showed for the fiscal year beginning July 1, 1911, and ending June 30, 1912, that the Missouri corporation had the control of the Texas corporation and owned its entire stock, and that its bonds were deposited by the Missouri corporation to secure a loan of its own. The plaintiff also introduced an official publication, called a folder, which showed W. B. Biddle to be vice-president of the Missouri corporation and also vice-president of the Texas corporation. This folder

also contained a time table from Enid, Oklahoma, to Vernon, Texas, with the direction to ticket agents that but one coupon was required on tickets from junction points to all the points on the line of the Texas corporation; that said folder also contained a map headed "Frisco Lines," which indicated the line from Enid, Oklahoma, to Vernon, Texas. The court said:

> "This raises the question as to the liability of the railroad company which is operating the road of another corporation to one who assumes the relationship of a passenger to it. In our opinion the evidence was sufficient to go to to the jury on the question whether the plaintiff in error was operating this road."

The court then cites with approval the following cases:

> *Lehigh Valley Railway Co.* v. *Dupont,* 128 Fed. 840, 64 C. C. A. 478.
> *Lehigh Valley R. Co.* v. *Delachesa,* 145 Fed. 617, 76 C. C. A. 307.

Also:

> 33 Cyc. 697.

In *Lehigh Valley Railway Co.* v. *Dupont, supra,* it was held:

> "Where the lines of several railroad corporations are conducted as a single system, for the purpose of the traffic between different points, originating on either, and such corporations

divided the proceeds of such business on a mileage basis, the several corporations as to such business were partners, and liable to third persons on the principles of the law of agency.

"Where defendant sold deceased a ticket for transportation between two points, containing nothing to show that such transportation, or a part thereof, was to be performed on the E. Railroad, operated by another corporation, whose stock was entirely owned by the L. T. Railroad Company, the stock of which in turn was owned by defendant company, which in fact controlled the operation of the E. Railroad Company through the defendant's officers, defendant was liable for the wrongful killing of such passenger, though resulting from the negligence of the E. Railroad Company."

In the body of the opinion it is said:

"But the law does not prevent one railroad corporation from making a contract with a passenger to carry him beyond its own road and upon or over the connecting roads of another railroad corporation and assume towards him all the ordinary obligations of a passenger carrier during the transit. The contract, being incidental to one to carry him over its own road, it not *ultra vires.* Nor is it *ultra vires* for a railroad corporation to agree with other railroad corporations upon such terms of co-operation in transacting their joint business as may be satisfactory. *And where the lines of several railroad corporations are conducted as a single system for the purpose of the traffic between different points originating upon either, the corporations may constitute themselves a partnership for the business of such traffic; and when they do, although the general management of each road is*

retained by the corporation owning it, the several corporations are, as to such business, partners, and liable upon the principles of the law of agency. When a relation of joint and several agency exists in a system of dominant and subordinate carriers, the dominant carrier is liable for all breaches of obligation by any of the other constituent carriers in the performance of a contract made by it for the transportation of passengers or freight. These propositions are established by the following authorities:

"*Swift* v. *Pacific Mail Steamship Co.*, 106 N. Y. 206, 12 N. E. 583; *Philadelphia, etc. R. Co.* v. *State*, 58 Md. 372; *Wyman* v. *Chicago, etc. R. Co.*, 4 Mo. App. 578; *Bradford* v. *So. Car. R. Co.*, 7 Rich. Law 201, 62 Am. Dec. 411; *Harris* v. *Cheshire R. Co.* (R. I.), 16 Atl. 512; *Block* v. *Fitchburg R. Co.*, 139 Mass. 308, 1 N. E. 348; *Independence Mills Co.* v. *Burlington, etc. R. Co.*, 72 Iowa 535, 34 N. W. 320, 2 Am. St. Rep. 258; *Cincinnati R. Co.* v. *Spratt*, 2 Duv. (Ky.) 4; *Barter* v. *Wheeler*, 49 N. H. 9, 6 Am. Rep. 434. We find nothing inconsistent with these propositions decided in *Pennsylvania R. Co.* v. *Jones*, 155 U. S. 333, 15 Sup. Ct. 136, 39 L. ed. 176. Especially should the dominant corporation be regarded as the principal and the constituent corporations as agents when, as in this case, the dominant corporation ultimately derives all the profits and incurs all the losses arising from the traffic originating on any of the lines. We conclude that the relations of the defendant with the Easton & Amboy Railroad Company in respect to the traffic originating on the lines of either were those of a principal and its agent. The ticket which it sold to the decedent evidenced a contract for through carriage between Easton and Alpha in either direc-

tion, and on its face did not purport to be the contract of the Easton & Amboy Railroad Company, or refer to that corporation in any way. In view of the relations between the two carriers, it should be regarded as a contract for through transportation, which, so far as it was to be performed on the Easton & Amboy Railroad, was to be performed by an agent of the defendant. Upon the undisputed evidence the trial judge would have been justified in instructing the jury to find a verdict for the plaintiff if they found in her favor upon the issues of negligence and concurring negligence. Consequently the defendant was not prejudiced by his rulings in receiving evidence offered for the purpose of showing that the defendant had held itself out to the public as operating the Easton & Amboy Railroad, or in submitting the case to the jury upon the theory that the plaintiff was not entitled to a verdict unless they should find that the defendant had so held itself out to the public. The complaint set out the facts constituting the cause of action, and was framed upon the legal theory that the defendant was responsible for its own negligence and for that of the Easton & Amboy Railroad Company, and the amendment permitted by the trial judge was unnecessary and did not prejudice the defendant."

In *Lehigh Valley R. Co.* v. *Delachesa, supra,* it was held:

"Where one railroad company controls others through the ownership of their stock and operates the lines of all as a single system, though the general management of each road is retained by the corporation owning it, the relation between the dominant and subordinate companies with respect

to traffic originating on the lines of the former is that of principal and agent, and the dominant company is directly liable for an injury to one employed in unloading one of its own cars on the tracks of a subordinate company through the negligence of employes of the latter."

In 33 Cyc. 697, it is said:

"One railroad company does not become liable for the acts of the servants of another merely by reason of being a stockholder in that company, or a guarantor of its bonds, as such facts do not of themselves constitute either a partnership or make one company the servant or agent of the other; *but where one company actually controls others through the ownership of their stock and operates all of the lines as a single system, although the general management of each road is retained by the company owning it, the dominant company will be liable for injuries due to the negligence of one of the subordinate companies.*"

In the case at bar, it will be noted from plaintiff's Exhibit K that the Rock Island Lines issue a folder containing time tables, and Table No. 50 contains a list of the stations from Memphis, Tennessee, to Tucumcari, New Mexico. On the cover page of the folder we find this significant advertisement:

"The Rock Island is unique in that with its own rails it serves the broad and rich territory bordered by Lake Michigan and the Mississippi River on the east, the Dominion of Canada on the north, the Rocky Mountains on the west and the Gulf of Mexico

and the Republic of Mexico on the south. It also reaches advantageously, over the rails of its connections, the great empire west of the Rocky Mountains to the Pacific Ocean."

We also find from the testimony of Mr. H. L. Reed, general superintendent of the Chicago, Rock Island & Pacific Railway Company, whose residence is at El Reno, Oklahoma, that the Official Guide of Railroads of the United States is recognized by all railroads as being correct, the information found therein being furnished by the railroads; that on page 803 of said Official Guide Mr. J. E. Gorman is named as president of the Chicago, Rock Island & Pacific Railway Company, and also president of the Chicago, Rock Island & Gulf Company; that Mr. Warner is manager of the second district of the Chicago, Rock Island & Pacific Railway Company, with headquarters at El Reno; that the second district of the Chicago, Rock Island & Pacific Railway Company comprises all of the lines of railroad in Texas, Tennessee, Louisiana, Arkansas, Oklahoma, New Mexico, and part of the lines in Kansas and Missouri; that Mr. Warner is also vice-president of the Chicago, Rock Island & Gulf Railway Company and has his headquarters in El Reno, Oklahoma, as vice-president of that company; that among the lines in Texas which form a portion of the jurisdiction of the second district under Mr. Warner are the Chicago, Rock Island & Gulf lines.

Mr. Reed further states that passenger trains run right through without any stop or change at the state lines and tickets are sold from Oklahoma City to Amarillo and Tucumcari. Mr. Reed further stated that the Chicago, Rock Island & Gulf lines are a part of the Rock Island system and are so carried in the advertisements.

The annual reports of the Chicago, Rock Island & Pacific Railway Company filed with the State Corporation Commission for the years 1919 and 1920 were introduced in evidence, and under the sworn statements of that company it appears that that company owns all of the stock of the Chicago, Rock Island & Gulf Railway Company; that the per cent of control of the company is 100. The reports of that company for both the years 1919 and 1920 show under a sub-head, "Chicago, Rock Island & Gulf Railway Company," "Extent of Control" that it is 100%.

It was contended by the plaintiff in error in the state court that inasmuch as the operation of these lines of railroad were in the hands of an agent for the United States Railroad Administration, then that the ownership of the stock or control of one corporation by the other could, in no sense, be germane to the situation.

Great stress is placed upon the decision of this

court in *Missouri Pacific R. Co.* v. *Ault*, 256 U. S. 554, 65 L. ed. 1087, but an examination of that case must convince the court that it is not in point and has no bearing whatever upon the issues involved in this appeal.

The State of Arkansas had a statute which was penal in its nature and a suit was instituted in the courts of Arkansas to enforce the penal provisions of that statute. The statute was directed at railway companies and it was the contention of the party instituting the suit under the statute that the penalty provisions applied to the director general in charge of the operation of railroads as well as to a carrier, but this court holds that the director general is not made liable for statutory penalties for a violation of state laws. *In the present case the agent of the Railroad Administration is not being sued for a penalty but for his neglect as a common carrier in failing to discharge his duties as such.*

In the case of *Wichita Falls & Northwestern Railway Co.* v. *Puckett, supra,* the plaintiff, Puckett, was the locomotive engineer in charge of one of the railway company's engines, and was injured in the roundhouse at Wichita Falls, Texas, while attempting to start his engine. Suit was brought in Oklahoma against the Wichita Falls & N. W. Railway Company, an Oklahoma corporation, and the railway company defended upon the

ground that the plaintiff's injuries were received while in the employ of the Wichita Falls & N. W. Railway Company, of Texas. Plaintiff, Puckett, replied, alleging that the Wichita Falls & N. W. Railway Company of Texas and the Wichita Falls & N. W. Railway Company (the Oklahoma corporation) were one and the same company. The court in its opinion says:

> "The record discloses the following facts: The Wichita Falls & Northwestern Railway Company of Texas and the Wichita Falls & Northwestern Railway Company, the defendant, were each promoted by J. A. Kemp and Frank Kell, of Wichita Falls, Texas. The Texas company was incorporated September 26, 1906, under the laws of Texas, and the defendant company was incorporated under the laws of Oklahoma, October 5, 1906. Kemp & Kell originally owned most, if not all, of the stock of both companies. Both companies were organized with J. A. Kemp as president; Frank Kell, vice-president and general manager, and Wylie Blair as secretary; W. S. Hays, treasurer; Thomas R. Orth, superintendent, and C. C. Huff, general attorney for each of said companies.
>
> "The Oklahoma corporation, the defendant herein, was promoted, incorporated, and organized for the purpose of co-operation with the Texas corporation in the construction of a continuous line of railway from Wichita Falls, Texas, to points in Oklahoma.
>
> "The Wichita Falls & Northwestern Railway Company of Texas constructed its track from the city of Wichita Falls, Wichita County, Texas, north to the boundary line between Texas and Oklahoma, from

which point the Wichita Falls & Northwestern Railway was constructed north into Oklahoma, the rails of the two companies connecting at a point near the middle of the bridge over Red River, designated as the boundary line between the two states, and together these railroads constituted one continuous line from Wichita Falls to cities and towns in Oklahoma.

"The two lines of railways mentioned were included, with others, in a system of railroads controlled by J. A. Kemp and Frank Kell, in which they owned most, if not all, the stock. This system was known as 'The Wichita Falls Route,' which name was labeled on the cars of both companies, and such cars used and operated over the lines of both companies. The Wichita Falls Route system continued and existed at the time of the plaintiff's injury in December, 1909, and, so far as the evidence in this case discloses, is still in existence, with the personnel of its principal and managing officers practically the same, except that R. J. Sullivan is the present superintendent."

After quoting from the testimony of several witnesses, including the plaintiff, Puckett, the court says:

"In short it appears from the evidence: That the Wichita Falls & Northwestern Railway Company of Texas and Wichita Falls & Northwestern Railway Company were incorporated with the same general officers, with a view of co-operation of the Oklahoma company with the Texas company in the construction and operation of a continuous line of railway from Wichita Falls, Texas, to points in Oklahoma, and that, at the time of plaintiff's injury, said companies had one set of officers from president down. That

these companies and other railway companies, controlled by J. A. Kemp and Frank Kell, were known and operated as the 'Wichita Falls Route,' which name was labeled on the cars of both companies. That the earnings of both companies went into one common fund and were deposited in the same depository in Wichita Falls, the headquarters of 'The Wichita Falls Route.' Each employee of the route system was employed by the same person and received his salary in one check drawn by the same person on the common fund of the two companies. Each train crew, including engineers, was under the management and control of the same person at Wichita Falls, and engineers, trains, and train crews were sent indiscriminately from Wichita Falls over both lines of road, without change or interruption, into Oklahoma. That since the construction of the Oklahoma line of railway, no train was ever sent to run out of Wichita Falls over the Texas road which did not go over into Oklahoma, unless something was wrong with the railroad bridge over Red River, the boundary line between said states. That the continuous line of railroad operated by these two companies consists of about 17 miles in Texas and a much greater distance in Oklahoma, and the operating expenses, including the salaries of engineers and train crews, were borne by the two companies in proportion to the number of miles of railway situated respectively in Texas and Oklahoma.

"Thus the Oklahoma line contributed the greater portion of such expenses. The tickets for passenger fares were card tickets and were sold indiscriminately from points on the Texas line to points on the Oklahoma line, and vice versa, and the proceeds thereof likewise turned into the common fund refer-

red to. Plaintiff, Puckett, was employed by Davis, the master mechanic, for the Wichita Falls Route system, and did not know until after his injury that said system included more that one railroad or corporation; and it appears that during his employment he received orders from Davis, the master mechanic, both in Wichita Falls and at the end of plaintiff's run at Frederick, Okla. Plaintiff's usual run extended from Wichita Falls, Tex., to Frederick, Okla., and at the time he was hurt he was ordered by the master mechanic to take a defective engine out of the roundhouse at Wichita Falls, which engine was used for the purposes of the Wichita Falls Route system. The evidence fails to show whether the engine on which plaintiff was hurt was ordered out and was being taken out of the roundhouse by plaintiff for the purpose of switching the Oklahoma company's cars in the switchyards, or for the purpose of being sent from Wichita Falls into Oklahoma, or for what purpose it was ordered out. Plaintiff's application for employment was upon a blank headed 'Wichita Falls Route,' and was addressed to W. M. Davis, master mechanic, and throughout the application 'the company' was referred to as the party with whom employment was sought. When plaintiff was discharged after his injury, he was discharged by the superintendent of Wichita Falls Route system.

"In other words, plaintiff made application to defendant's master mechanic for employment on the Wichita Falls Route system, which included the defendant company, and he was employed and worked continuously to the date of his injury for said route, much of the time on defendant's road, and in the roundhouse and switchyards in which defendant's engines were kept and its switching done and of which defendant's master mechanic was foreman.

Plaintiff's salary was paid out of the common fund, most of which was contributed by defendant, and which was kept by defendant's treasurer at defendant's headquarters; plaintiff's salary check was drawn by defendant's auditor and bookkeeper, and during his employment plaintiff was under the direction, control and supervision of defendant's master mechanic and superintendent, at times receiving his orders at both Wichita Falls, Tex., and Frederick, Okla., from these officers, and when he was injured he was discharged by defendant's superintendent. It also appears from the testimony of Mr. Huff, general attorney of the Wichita Falls Route and all railway companies constituting said system, that J. A. Kemp and Frank Kell, the president, vice-president and general manager, and stock owners of the Wichita Falls & Northwestern Railway Company of Texas, were the promoters of defendant railway company, which was incorporated with Kemp and Kell as president, vice-president and general manager, respectively, and other subordinate officers, the same as in the Texas corporation, and that the defendant company was incorporated for the purpose of co-operation between it and the Texas company in the construction and operation of a continuous line of railroad from Wichita Falls, Texas, to points in Oklahoma, 'whereby it could divert tonnage and receive tonnage.' These two companies have continuously co-operated in the joint operation of these two lines of railway since the organization of the defendant company."

We want, at this point, to particularly call the Court's attention to the testimony given by Mr. H. L. Reed, general superintendent of the plaintiff in error, that a train starting from Tucumcari, New Mexico, for

Oklahoma City, Oklahoma, comes over the main line of the Rock Island through the Panhandle of Texas; that no change is made at either the state line between New Mexico and Texas or the state line between Texas and Oklahoma; that all of the trains in Texas are handled by the dispatcher from Amarillo, including some of the trains in Oklahoma, as far as Sayre, and the dispatcher at El Reno handles trains to Tucumcari, New Mexico; that trains run through from Oklahoma City to Amarillo and to Tucumcari, and tickets are sold through to those places; that the Chicago, Rock Island & Gulf Railway is a part of the Rock Island System; that Time Table No. 50, identified by the witness, is gotten out by the Rock Island System; that J. E. Gorman is president of the Chicago, Rock Island & Pacific Railway Company, and also president of the Chicago, Rock Island & Gulf; that Mr. Warner, with headquarters at El Reno, Oklahoma, is manager of the second district of the Chicago, Rock Island & Pacific; that the second district includes all of the Rock Island lines in Texas, Tennessee, Louisiana, Arkansas, Oklahoma, New Mexico, and a part of Kansas and Missouri; that Mr. Warner is also vice-president of the Chicago, Rock Island & Gulf Railway, with headquarters at El Reno, Oklahoma; that the Chicago, Rock Island & Gulf lines in Texas are included in the second district, of which Mr. Warner is manager.

Frank Griffith, one of the defendants in error, also testified that he had made a good many trips to Oklahoma City from Tucumcari over the Rock Island; that the train crews run from Tucumcari into Amarillo, Texas, without change or interruption; that the same train crews operate the trains between Amarillo and Oklahoma City without interruption or change at the state line, but do change crews at Sayre, Oklahoma, and El Reno; that no change is made at the state line between New Mexico and Texas; that in dealing with Mr. Peterson, the live stock agent at Amarillo, Texas, he acted for the Chicago, Rock Island & Pacific Railway Company, and before doing so took the matter up with the dispatcher for that company at El Reno, Oklahoma.

All of the things testified to by the witness, referred to above, bring this case clearly within the principle announced in the Sanford and Puckett cases.

In the Ault case, which appears to be the leading case relied upon by the plaintiff in error, the court says:

> "The contention that the director general, being the carrier, is liable for the penalty imposed by the Arkansas statute, is rested specifically upon the clause in Sec. 10, to the effect that the carriers 'shall be subject to all laws and liabilities as common carriers, whether arising under state or Fed-

eral laws or at common law,' and the provision in Sec. 15, that the 'lawful police regulations of the several states' shall continue unimpaired. By these provisions the United States submitted itself to the various laws, state and Federal, which prescribed how the duty of a common carrier by railroad should be performed, and what should be the remedy for failure to perform. By these laws the validity and extent of claims against the United States, arising out of the operation of the railroad, were to be determined. But there is nothing either in the purpose or the letter of these clauses to indicate that Congress intended to authorize suit against the government for a penalty, if it should fail to perform the legal obligations imposed. *The government undertook, as carrier, to observe all existing laws; it undertook to compensate any person injured through a departure by its agents or servants from their duty under such law;* but it did not undertake to punish itself for any departure by the imposition upon itself of fines and penalties, or to permit any other sovereignty to punish it. Congress is not to be assumed to have adopted the method of fines paid out of public funds to insure obedience to the law on the part of the government's railway employees. The director general adopted a more effective and direct method: 'Now that the railroads are in the possession and control of the government, it would be futile to impose fines for violations for said laws and orders upon the government, therefore it will become the duty of the director general in the enforcement of said laws and orders to impose punishments for wilful and inexcusable violations thereof upon the person or persons responsible therefor.' General Order No. 8, *id.*, p. 167.

"The purpose for which the government permitted itself to be sued was compensation, not punishment."

Sections 10 and 15 of the Federal Control Act, referred to by this court in the Ault case, are as follows:

"Sec. 10. That carriers while under Federal control shall be subject to all laws and liabilities as common carriers, whether arising under State or Federal laws or at common law, except in so far as may be inconsistent with the provisions of this Act, or any other Act applicable to such Federal control or with any order of the president. Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law; and in any action at law or suit in equity against the carrier, no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal government," etc.

"Sec. 15. That nothing in this Act shall be construed to amend, repeal, impair, or effect the existing laws or powers of the states in relation to taxation or the lawful police regulations of the several states except wherein such laws, powers or regulations may effect the transportation of troops, war materials, government supplies, or the issue of stocks and bonds."

The question involved in the case at bar is one of compensation and for actual loss sustained through the negligence of the plaintiff in error. It is not a penalty, and, as said by this court, "the validity and extent of claims against the United States, arising out of the

operation of the railroads," are to be determined under the provisions of existing laws, whether State, Federal or common law. The court in its opinion in the Ault case says:

> "The government undertook, as carrier, to observe all existing laws; it undertook to compensate any person injured through a departure by its agents or servants from their duty under such law."

Here we have in a nutshell an expression from this court as to what is meant by Sections 10 and 15 of the Federal Control Act, and from the construction placed upon those provisions of that statute, the director general is subject to all the laws and liabilities that the carrier was subject to when not under the control of the government.

In the Sanford and Puckett cases, identical with the case at bar, the Supreme Court of Oklahoma has said that the dominant carrier was liable for the negligence of the subordinate carrier. The principle announced in the Sanford and Puckett cases is the same as the one announced in the cases of *Lehigh Valley Railway Co.* v. *Dupont* and *Lehigh Valley Railway Co.* v. *Delachesa, supra.*

In the case of The Willem Van Driel, Sr., 252 Fed.

35, by the Circuit Court of Appeals of the Fourth Circuit, the court says:

> "The inquiry remains whether the Pennsylvania railroad is liable as a participant in the operation of the elevators by reason of its control of the elevator company. This depends upon the question of fact whether the elevator company, although in name and organization a distinct corporation, was in substance a mere corporate agent or instrumentality of the Pennsylvania Railroad Company. *So. Pac. Terminal Co.* v. *Int. Comm. Com'n.*, 210 U. S. 523, 31 Sup. Ct. 279, 55 L. ed. 310; *Jos. R. Foard Co.* v. *State of Maryland*, 219 Fed. 827, 135 C. C. A. 497; *Lehigh Valley R. Co.* v. *Delachesa*, 145 Fed. 617, 76 C. C. A. 307.
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> "It is true that the elevator company and its stockholders and directors held meetings, but in all essential particulars their action was dictated and controlled by the railroad company. The whole course of dealing showed that the surplus of $200,000 it had in the bank at the time of the fire was absolutely under the control of the railroad company. The superintendent of the elevator company who directed its mechanical operation and its subordinate employes, had no duty to perform with the railroad company, but were evidently under its ultimate control. It would be impossible to imagine a relationship between corporations where the subsidiary corporation was more completely under the control of the dominant corporation. The elevators were constructed and operated merely as a facility to the business of the railroad company. Applying the language of Judge Wallace in *Lehigh Valley Railroad Co.* v. *DuPont*, 128 Fed.

840, 64 C. C. A. 478, the potential and ultimate control of all its property and business affairs of the elevator company was lodged in the railroad company, and this control was exercised as completely and as directly as the machinery of corporate organisms would permit. Such complete dominance and control by the railroad company made the elevator company its mere puppet. *United States* v. *Del., Lack. & West. R. R.*, 238 U. S. 516, 35 Sup. Ct. 873, 59 L. ed. 1438."

Again, in the case of *Luckenbach S. S. Co. Inc. et al.* v. *W. R. Grace & Co.*, Circuit Court of Appeals, Fourth Circuit, 267 Fed. 676, it was held:

"Where a corporation, which owned a number of ships, leased them to another corporation, which had a small capital stock, and which was controlled by the same officers and directors, and 90 per cent. of whose stock was owned by the same stockholders, at a rental which, though more than nominal, was far below the value of the ships, the owning corporation so far participated in the contracts of leasing corporations as to be liable for their breach."

In the body of the opinion the court says:

"Is the Luckenbach Company liable for the default of the Luckenbach Steamship Company?

"From the statements and admissions in their respective answers these facts appear: The Luckenbach Steamship Company has a capital of only $10,000. The Luckenbach Company, also a Delaware corporation, is capitalized at $800,000. They have the same directors and the same officers, and

Edgar F. Luckenbach, who was president of and personally managed both companies, owns 94 per cent of the stock of the Luckenbach Steamship Company, and almost 90 per cent of the stock of the Luckenbach Company. The latter company owns all or most of the steamers referred to in the record, some eight or nine in number. By contracts of May 1, July 1, and October 1, 1915, copies of which are annexed to the libel, these steamers were leased to the steamship company for terms running into the year 1926, and upon terms which, though something more than nominal, are obviously far below their rental value.

"Putting aside any inquiry into the motive for this arrangement, we think it too plain for serious question that the facts here considered show such identity of the two corporations, or at least give rise to such a strong presumption of their identity as warrants the conclusion that the Luckenbach Company is equally responsible with the steamship company for the breach by the latter of its contract with the appellee. For all practical purposes the two concerns are one, and it would be unconscionable to allow the owner of this fleet of steamers, worth millions of dollars, to escape liability because it had turned them over a year before to a $10,000 corporation, which is simply itself in another form."

We do not rest our case upon the ownership of all the stock of the Gulf Lines by the Chicago, Rock Island & Pacific Railway Company, but call particular attention to the following facts:

(1) The sworn annual reports of the Chicago,

Rock Island & Pacific Railway Company filed with the Corporation Commission for the years 1919 and 1920, showing the Chicago, Rock Island & Pacific Railway Company to have the "control" of the Gulf Lines—to what extent—100%—not alone the ownership of its stocks and bonds, but 100% control.

(2) The same train crews—the same trains—operate over the Gulf Lines in Texas without interruption or change at either the New Mexico-Texas state line or the Oklahoma-Texas state line.

(3) The dispatcher at Amarillo operates and directs the movement of trains over the lines in New Mexico, Texas, and in Oklahoma as far east as Sayre.

(4) Through tickets are sold from Oklahoma City to Amarillo, Texas, and Tucumcari, New Mexico.

(5) The Gulf Lines are a part of the Rock Island System.

(6) Advertisements are carried in a time table folder gotten out by the Chicago, Rock Island & Pacific Railway Company, in which the public is advised that *the Rock Island is unique in that, with its own rails, it serves the broad rich territory bordered on the north by Lake Michigan, on the east by the Mississippi River, on the west by the Rocky Mountains, and on the south by the Gulf of Mexico and the Republic of Mexico.*

(7) J. E. Gorman is president of both the Chicago Rock Island & Pacific Railway Company and the Chicago, Rock Island & Gulf Railway Company.

(8) Mr. Warner, with headquarters at El Reno, Oklahoma, is vice-president of the Chicago, Rock Island & Gulf Railway Company and manager of the second district of the Chicago, Rock Island & Pacific Railway Company.

(9) The second district of the Chicago, Rock Island & Pacific Railway Company comprises all of the lines of railroad in Texas, Tennessee, Louisiana, Arkansas, Oklahoma, New Mexico, and a part of the lines in Kansas and Missouri.

(10) Among the lines in Texas which form a portion of the jurisdiction of the second district under Mr. Warner, with headquarters at El Reno, Oklahoma, are the Chicago, Rock Island & Gulf Lines.

(11) The arrangements for obtaining cars for the transportation of cattle were made with a Mr. Peterson, of Amarillo, Texas, live stock agent, who obtained his authority from the dispatcher at El Reno, Oklahoma.

(12) Arrangements for the loading of the cattle at Campana, New Mexico, were made with the joint agent of the Chicago, Rock Island & Pacific Railway

Company, and the El Paso & Southwestern Railway Company at Tucumcari, New Mexico, who promised that the cattle would move out of Tucumcari on the evening of January 6, 1920, and who advised Grover B. Hill, "If I tell you to load those cattle, we will haul them out." It was this same agent, acting for the Chicago, Rock Island & Pacific Railway Company, who informed Mr. Hill when the cattle reached Tucumcari on the evening of January 6, that the train had been annulled. This action on the part of the Chicago, Rock Island & Pacific Railway Company started the delay which finally resulted in more than seventy-two hours.

(13) The Chicago, Rock Island & Pacific Railway Company operates the Texas lines through its agents in Texas (see testimony of Mr. Grimes, 57).

(14) The existence of the Gulf Lines in Texas is only a legal excuse to comply with the Texas laws (see testimony of Mr. Grimes, 57).

(15) Claim settlements in Texas are made upon authority of the Chicago, Rock Island & Pacific Railway Company's offices in Chicago.

(16) Time Table No. 50, Exhibit K, shows a list of stations between Memphis, Tennessee, and Tucumcari, New Mexico, and the time schedule of its trains.

The foregoing facts, clearly established by the evidence in this case, leaves no room for doubt, in our judgment, that the Gulf Lines in Texas are operated and controlled by the Chicago, Rock Island & Pacific Railway Company when not under federal control, and we think it is clearly settled by the expressions found in the opinion of this court in the *Missouri Pacific R. Co.* v. *Ault* case, that the agent for the United States Railroad Administration would be liable in the same manner as if the carriers were in charge of and operating the respective lines of railway.

Another case having a distinct bearing upon the question under consideration is *United States* v. *Delaware, Lackawanna & Western R. R. Co. et al.*, 238 U. S. 516, 59 Law. ed. 1438. In that case the court had up for consideration the commodity clause of the Hepburn Act of 1906, 34 Stat. L. 584, chap. 3591 (Compiled Statues 1913, par. 8563), which statute made it unlawful for a carrier to haul its own coal beyond the limits of a state; it was said:

> "But the decisions construing the statute recognize that one corporation can be an agent for another corporation, and that by means of stock ownership one of such companies may be converted into a mere agent or instrumentality of the other. *United States* v. *Lehigh Valley R. Co.*, 220 U. S.

257, 273, 55 L. ed. 458, 463, 31 Sup. Ct. Rep. 387. And this use of one by the other—or this power of one over the other—does not depend upon control by virtue of the fact that stock therein is held by the railroad company or by its shareholders. For dominance of the coal company may be secured by a carrier (*New York, N. H. & H. R. Co.* v. *Interstate Commerce Commission*, 200 U. S. 363, 50 L. ed. 515, 26 Sup. Ct. Rep. 272) not only by an express contract of agency, but by any contract which, in its practical operation, gives to the railroad company a control or an 'interest, direct, or indirect,' in the coal sold, at the mouth of the mines.

"Assuming, then, that the incorporation and organization of the coal company under the auspices of the railroad company was legal; assuming that the election of railroad officers as the first managers of the coal company was not illegal; assuming that, as officers of the railroad, they could contract with themselves as officers of the coal company; assuming that at the time of organization it was not unlawful for the railroad company and the coal company not only to have officers but offices in common; and finally assuming that all these facts together did not, in and of themselves, establish an identity of corporate interest,—still these facts, taken together, are most significant. They at least prove that the relation between the parties was so friendly that they were not trading at arm's length. And the further fact that one of the parties was under a statutory disability as to hauling coal makes it necessary to carefully scrutinize their arrangement in order to determine whether it was a bona fide and lawful contract of sale, or a means by which the railroad, though parting with the legal title, retained an interest and control in what had been sold."

Since the Supreme Court of Oklahoma rendered its decision in this case, and since this appeal has been perfected, another case has been decided by the state court involving the same questions that were briefed by the parties in this case. In *Davis, Director General* v. *Griffith*, 106 Okla. 1, 230 Pac. 262, it was held:

> "It was not the intention of the Federal Control Act (Comp. St. 1918, Comp. St. Ann. Supp. 1919, Secs. 3115¾a-3115¾p) to change the rights of litigants, nor to alter or abrogate the rules of evidence by which those rights might be established, as theretofore recognized and enforced in the various states, unless the existence of such rights and the means of their enforcement ran counter to the paramount purposes of the government in its mobilization of the country's resources. *Mo. Pac. Ry. Co.* v. *Ault*, 256 U. S. 554, 41 S. Ct. 593, 65 L. ed. 1087; *Dahn* v. *Davis*, 258 U. S. 421, 42 S. Ct. 320, 66 L. ed. 696. *Therefore a rule of law recognized and enforced in this state prior to federal control, which rendered a dominant carrier liable for negligence occurring on one of its subservient lines, and the rule of evidence and degree of proof by which such dominant control might be shown, were not abrogated by the Federal Control Act, because not obnoxious to any purpose of the government.*" (italics ours).

The facts in that case are almost identical with the facts in the case at bar, and this court denied a petition for writ of certiorari on May 11, 1925.

No argument was presented in the state court by plaintiff in error that the verdict of the jury is unjust, and we take it that none could be presented, in view of the evidence as to the extent of damages sustained by the defendants in error.

Conclusion.

We submit that in view of what is disclosed by the transcript of record in this case, and the undisputed evidence as to the absolute control of the Gulf Lines by the Chicago, Rock Island & Pacific Railway Company to the extent of 100%, the facts in this case bring it clearly within the rule laid down in the Sanford and Puckett cases, and particularly the case of *Davis, Director General* v. *Griffith,* 106 Okla. 1, 230 Pac. 262, in which this court denied a petition for writ of certiorari.

We therefore respectfully pray this court that the judgment of the trial court be affirmed, and that this court render such opinion as should have been rendered by the Supreme Court of Oklahoma in affirming the judgment.

Respectfully submitted,

FRED E. SUITS,
C. E. HALL,
Attorneys for Defendants in Error.

Dated this 25th day of September, 1925.

SUPREME COURT OF THE UNITED STATES.

No. 32.—October Term, 1925.

James C. Davis, Agent, etc., Petitioner, *vs.* L. D. Alexander and Frank Griffith.	On Writ of Certiorari to the Supreme Court of the State of Oklahoma.

[November 16, 1925.]

Mr. Justice Brandeis delivered the opinion of the Court.

Cattle shipped during federal control over the Chicago, Rock Island and Pacific System from stations in New Mexico through Texas to Oklahoma City were negligently injured in transit. To recover the damages suffered this suit was brought in a state court of Oklahoma against James C. Davis, as Agent designated by the President, pursuant to § 206*a* of Transportation Act, 1920, February 28, 1920, c. 91, 41 Stat. 456, 461. The injury was inflicted partly in New Mexico, partly in Texas, and partly in Oklahoma. The main controversy was whether plaintiffs could recover for the injury suffered in Texas. The jury returned a verdict for the entire damages. Judgment entered thereon was affirmed by the highest court of the State. 93 Okla. 159. A petition for a writ of certiorari was granted under § 237 of the Judicial Code as amended. 265 U. S. 577.

The lines of the Rock Island in Texas were owned by a subsidiary—the Chicago, Rock Island and Gulf Railway Company, a Texas corporation. The petition described Davis as Agent, United States Railroad Administration, in charge of Chicago, Rock Island and Pacific Railroad and Chicago, Rock Island and Gulf Railroad. In the trial court it was assumed that effective service of the summons pursuant to § 206*b* was made only upon Davis as Agent in charge of the Pacific. There, the shippers sought to recover against him as such on the ground that the transportation service undertaken was for the system; that, under federal control as before, the Pacific was the dominant carrier and operated, either alone or jointly with the Gulf, the

whole system, including the Gulf lines; and that recovery for all damages suffered could, therefore, be had against Davis as Agent in charge of the Pacific. The defendant insisted that the Director General had operated the Pacific and the Gulf, not as parts of a single system, but as individual and distinct entities. The shippers introduced substantial evidence in support of their allegations. The case was submitted to the jury under instructions which made it clear that the verdict must be limited to the damage suffered on lines owned by the Pacific, unless the jury should find that the Gulf lines were being operated with the other Rock Island lines as parts of a single system.

To these instructions exceptions were duly taken, but the Supreme Court of Oklahoma deemed it unnecessary to pass upon their correctness. It affirmed the judgment on the ground that the Director General operated all the railroads of which the President took control as a single national system, not as separate companies or systems; that the Director General was liable in damages for negligent operation regardless of the relation of the different lines to one another; and that under section 206*b* service of process on the service agent for any railroad gave jurisdiction over the Agent of the President in respect to all railroads under federal control in the operation of which the damages complained of resulted. Its opinion was delivered November 6, 1923. Later, this Court held in *Davis* v. *Donovan*, 265 U. S. 257, that under § 10 of the Federal Control Act and General Order 50-A the Director General was not suable generally as the operator of all the railroads, but only with reference to the particular transportation system or carrier out of whose operations the liability in question arose. The rule declared in the *Donovan* case has been applied in suits brought under Transportation Act, 1920, against the Agent of the President on causes of action arising during federal control. *Manbar Coal Co.* v. *Davis*, 297 Fed. 24. The Supreme Court of Oklahoma reached the same conclusion in *Davis, Federal Agent* v. *Benson*, 105 Okla. 41, overruling its decision in the case at bar.

While the ground on which the Supreme Court of Oklahoma rested its decision was thus unsound, the judgment of affirmance was right. Where one railroad company actually controls another and operates both as a single system, the dominant company will

be liable for injuries due to the negligence of the subsidiary company. *Lehigh Valley R. Co.* v. *Dupont*, 128 Fed. 840; *Lehigh Valley R. Co.* v. *Delachesa*, 145 Fed. 617; *Wichita Falls & Northwestern Ry. Co.* v. *Puckett*, 53 Okla. 463. There was no error in the instructions excepted to.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.